

# Environmental Enforcement Report 2010

Flemish High Council of Environmental Enforcement





**FLEMISH HIGH COUNCIL OF ENVIRONMENTAL ENFORCEMENT**

## **ENVIRONMENTAL ENFORCEMENT REPORT 2010**



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

The Flemish High Council of Environmental Enforcement (Vlaamse Hoge Raad voor de Milieuhandhaving/VHRM) has existed for over two years now and the Environmental Enforcement Report 2010 is the second environmental enforcement report. With the Environmental Enforcement Report 2009 the Flemish High Council of Environmental Enforcement has created something unique within the environmental enforcement landscape, since this report is the first to gather many useful data concerning the activities of enforcement actors. The Environmental Enforcement Report 2009 was not only welcomed within the Flemish Region. At the international level as well the Flemish High Council of Environmental Enforcement has definitely gained some prestige with the report. The Environmental Enforcement Report 2009 was translated into English and presented at several international forums. As a result, people have high expectations of the present report. Naturally, the Flemish High Council of Environmental Enforcement has tried to meet these expectations.

This second report covers the period from 1 January 2010 through 31 December 2010. The studied period thus pertains to an entire calendar year, contrary to the period studied in the Environmental Enforcement Report 2009. In addition, the Flemish Parliament Act on Environmental Enforcement (hereinafter called Environmental Enforcement Act) had been effective for a longer period of time, which means that its effects will presumably be increasingly revealed in the acquired data. The Environmental Enforcement Report 2009 also provides the Flemish High Council of Environmental Enforcement with factors of comparison for the present report. The Flemish High Council of Environmental Enforcement has therefore grasped this opportunity to compare the 2009 data with those of 2010, whenever possible, in addition to providing the content laid down by Act. Such a comparison indeed allows us to describe the evolutions in the implementation of the Environmental Enforcement Act and may therefore also contribute to the evaluation of this Flemish Parliament Act in 2012.

This element of comparison gives the Environmental Enforcement Report 2010 a certain added value, although the development of such a document is still a learning process. The survey of the environmental enforcement actors is mostly similar to that for the Environmental Enforcement Report 2009, although the Flemish High Council of Environmental Enforcement has drawn lessons from the previous exercise. Since no uniform definitions were available at the time, the questionnaires were interpreted and consequently completed differently by the environmental enforcement actors. By defining the enforcement terminology that is used in the questionnaire for the present report, the VHRM not only adopted an anticipating approach in order to guarantee a uniform design, but in this way also hopes to make those who are concerned with environmental law enforcement more familiar with the correct meaning of the various terms. In addition the questionnaire was supplemented or adjusted in order to gain a clearer picture of the enforcement landscape in the Flemish Region. Over the years this questionnaire will probably be further standardised, both within the framework of the learning process which the development of the environmental enforcement report is subject to, and in the context of the ever changing environmental enforcement landscape.

Naturally, the Flemish High Council of Environmental Enforcement continues to be fully dependent on the environmental enforcement actors, both in terms of the response rate and the accuracy of the provided data. Despite the fact that many actors spontaneously responded to the request of the Flemish High Council of Environmental Enforcement (and, in doing so, implemented the Environmental Enforcement Act) the response rate was not complete among all actors. As a result, the data included in this report are not always entirely representative. Apart from that, it was striking and disturbing - given the nature of the answers which the Flemish High Council of Environmental Enforcement sometimes received - that various enforcement actors are still not entirely familiar with the Environmental Enforcement Act. Together with

its working groups the Flemish High Council of Environmental Enforcement will during the next years aim to properly flesh out the Environmental Enforcement Act. By mentioning blatant replies in this report, it is of course not the idea to chant certain enforcement actors, but to recognise faults, so as to allow us to learn from mistakes and to make it possible to collect accurate data in the future. Also, it provides the Flemish High Council of Environmental Enforcement with clues and indications of problems that can be dealt with within the VHRM and its working groups.

A positive element is that many actors participated and have completed the questionnaire as truthfully as possible. This allows the Flemish High Council of Environmental Enforcement to draw conclusions on the activities carried out by the enforcement actors in 2010 and to underscore the evolutions in the implementation of the Environmental Enforcement Act in its Environmental Enforcement Report 2010. On behalf of the Flemish High Council of Environmental Enforcement I extend my sincerest thanks to the actors who responded to our questionnaire and who, in doing so, have helped us draw up this report.

By publishing the Environmental Enforcement Report 2010 the Flemish High Council of Environmental Enforcement not only wants to meet its obligations laid down by the Flemish Parliament Act, but also seeks to make an active and strong contribution to the environmental enforcement policy in the Flemish Region.



A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name.

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 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 'Supervision, 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 the environmental enforcement policy and the interpretation of its content. Therefore, with a view to an efficient enforcement of the environmental legislation, 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 holding 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 defined by 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 matters: 'Identification and Supervision', '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 the enforcement priorities for the coming calendar year for the regional authorities in charge of the enforcement of environmental law. It may also contain recommendations related to environmental law enforcement at the provincial and municipal levels and the 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, viz. 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<sup>5</sup> website.

By contrast, the environmental enforcement *report* must contain at least a general evaluation of the regional environmental 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 orders containing 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 pursued by municipalities and provinces; an inventory of the insights obtained during

1 Publication in the Belgian Official Journal, 29 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>

enforcement activity which can be used to improve environmental legislation, policy visions and policy implementation; and recommendations for the further development of environmental enforcement policy.

This report must contain all relevant figures on the environmental enforcement policy pursued over the past calendar year. The environmental enforcement report is regarded as a crucial element in the support, and possible correction, 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 the Flemish Minister of the Environment, Nature and Culture, Joke Schauvliege, on Wednesday 15 December 2010 and can be found on the VHRM<sup>6</sup> website.

## **1.2 Methodology and relevance of the Environmental Enforcement Report 2010**

### **1.2.1 Method**

The intention of the environmental enforcement report is to provide a concrete picture, based on relevant, reliable figures and qualitative data, of the environmental enforcement policy pursued in the Flemish Region from 1 January 2010 through 31 December 2010.

In order to achieve this objective – and its components as stipulated by the Flemish Parliament Act – the Flemish High Council of Environmental Enforcement drew up a questionnaire for the environmental enforcement actors, adapted to the different duties of each of these actors, by analogy with the Environmental Enforcement Report 2009.

The following actors were asked about their activities in the area of environmental law enforcement between 1 January 2010 and 31 December 2010:

- ▶ 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;
- ▶ Public Waste Agency of Flanders;
- ▶ Flemish Land Agency;
- ▶ Flemish Environment Flemish Environment Agency;
- ▶ Agency for Nature and Forests;
- ▶ Waterwegen en Zeekanaal NV;
- ▶ Flemish Agency for Care and Health;
- ▶ Agency for Roads and Traffic;
- ▶ Agency for Waterways and Sea Canal;

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

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- ▶ nv De Scheepvaart (Shipping Agency plc);
  - ▶ Department of Mobility and Public Works;
  - ▶ Flemish mayors;
  - ▶ Flemish municipalities;
  - ▶ Flemish police districts;
  - ▶ Flemish intermunicipal associations (active in the field of environmental enforcement);
  - ▶ the federal police;
  - ▶ Flemish provincial governors;
  - ▶ Flemish provincial supervisors;
  - ▶ Environmental Enforcement Court;
  - ▶ Public Prosecutor's Offices.

A standard questionnaire was used in order to obtain comparable data. Enquiries were made, for instance, about the number of supervisors within the organisation, the number of FTEs (full-time equivalents) dedicated to enforcement duties, the number of inspections<sup>7</sup> carried out between 1 January 2010 and 31 December 2010, the number of initial official reports drawn up, the number of identification reports drawn up and the number of administrative measures and safety measures imposed. The bodies authorised to impose sanctions were also asked about their activities between 1 January 2010 and 31 December 2010.

Based on the information obtained via the standardised questionnaires, 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 in a graph or table. When considered desirable for the sake of clarity and a good overview, the figures will be presented both in a graph and in a table.

Since this is the second environmental enforcement report of the Flemish High Council of Environmental Enforcement it was possible to make certain comparisons between the relative figures included in the Environmental Enforcement Report 2009 and the relative figures which the Flemish High Council of Environmental Enforcement received during the survey for the Environmental Enforcement Report 2010. This provides an insight into the evolution of the implementation of the Environmental Enforcement Act.

The Flemish Parliament Act clearly defines which matters have to be reported on as a minimum. The VHRM therefore adapted the questionnaires to these requirements, although it did opt for a different list of contents than that contained in the Environmental Enforcement Act.

### 1.2.2 Structure

First, an evaluation is made of the environmental enforcement policy pursued over the past calendar year by the regional supervisors, the federal police and the local police and the enforcement activities performed at the local level by provincial governors, provincial supervisors, municipal supervisors and supervisors of the intermunicipal associations. Figures are provided relating to the number of supervisors per organisation, the number of FTEs dedicated to enforcement duties per organisation and the number

<sup>7</sup> An inspection in the context of environmental enforcement means examining whether or not a legal and/or natural person who is bound by environmental law obligations actually complies with these legal obligations. These inspections can be broken down into on-site inspections or inspections of documents. In addition, the data refer to the number of environmental enforcement inspections carried out and not to the number of breaches identified during these inspections.

of inspections carried out by these supervisors in 2010. This also allows us to get an idea of the number of inspections carried out per supervisor. With regard to the federal and local police the types of official reports that were drawn up by the police in the context of environment in 2010 are discussed. 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. With regard to local environmental enforcement policy the number of Category 1, Category 2 and Category 3 plants present on the territory is pointed out as well. In addition, the supporting role of the provinces for the municipalities is evaluated based on the reporting of the provinces in the framework of the Cooperation Agreement 2008-2013. After that, the supervisory duties performed by the Flemish cities and municipalities are studied.

The focus in this second chapter is thus mainly on the efforts of the supervisory bodies.

In Chapter 3 the emphasis is on the use of individual environmental enforcement instruments, administrative measures and safety measures by the different environmental enforcement actors. In order to clearly define the term 'environmental enforcement instrument', a list of these instruments was drawn up based on the parliamentary preparations for the Environmental Enforcement Act. Based on this list, the standard questionnaires were drawn up. It concerns the following instruments: recommendations, exhortations, administrative measures (regularisation order, prohibition order, administrative enforcement, or a combination), safety measures, administrative fines (and deprivation of benefits) and criminal penalties<sup>8</sup>. Contrary to the Environmental Enforcement Report 2009, the enforcement instruments will be compared against the number of inspections during which a breach was identified and not against the total number of inspections performed. This does imply, however, that no comparisons can be made with 2009 in this chapter.

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 kinds of fines can be imposed as well, for instance municipal administrative sanctions and fines in the framework of mandatory levies. However, these do not fall under the Environmental Enforcement Act, and will therefore not be further discussed.

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

The data pertaining to 2010 will be used to carry out the evaluation below. In addition a comparison will be made, whenever possible, between 2009 and 2010 on the basis of the data from the Environmental Enforcement Report 2009.

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<sup>8</sup> The administrative fines (and deprivation of benefits) and the criminal penalties, however, 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 the evaluation of the sanctions policy is treated separately in Chapter 4.

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### 1.2.3 Notes

Despite the high expectations vis-à-vis 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 2010.

The Environmental Enforcement Act determines 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. However, the evaluation made here cannot be an evaluation in the strict sense. In order to determine how effective the environmental enforcement policy really is, certain evaluation criteria must be defined beforehand. Since this is the second environmental enforcement report of the Flemish High Council of Environmental Enforcement it is possible to make an evaluation of the further implementation of the Environmental Enforcement Act. The data from the Environmental Enforcement Report 2009 can be regarded as baseline. Naturally, it will be even more relevant in the future to make such comparisons, since an evaluation may then refer to several environmental enforcement reports. As the situation created by the Environmental Enforcement Act is fairly recent, however, the necessary caution must be exercised with respect to the figures and any conclusions and recommendations based on those figures.

A second note refers to the fact that the level of response was low and 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 are part of the Flemish Region, there was no complete response. As a result, the figures below are not entirely representative, and the conclusions must also be interpreted in this light.

In relation to the variations in the data, it should be pointed out that some of the terms used in the environmental enforcement landscape are interpreted in different ways. Despite the fact that the VHRM, in contrast to the survey for the Environmental Enforcement Report 2009, has very clearly defined the terms in the questionnaires, it became clear once again that not all actors were able to report on the same data (in a similar way). Again, it turned out to be very difficult to collect accurate data. This phenomenon has also resulted in overlapping and missing data. Hence, a first recommendation for the environmental enforcement policy is easy to make. In order to enable reliable reporting in the future, all actors involved in environmental enforcement must collect data in an unambiguous, uniform and consistent way and use the same definitions, for instance that of an 'inspection'. In 2010, the Flemish High Council of Environmental Enforcement has already started producing a glossary, which cannot only be used for the questionnaires, but will also be made available to the supervisors. However, the influence of inaccurate data reveals itself in the reliability of the data. Since a lot of questionnaires were completed by the local authorities and it became clear that they did not use the correct enforcement terminology, the Flemish High Council of Environmental Enforcement was compelled to include a category of 'inspections with unknown results'. However, caution must still be exercised when interpreting the data. The Flemish High Council of Environmental Enforcement therefore only draws careful conclusions and always tries to point out the shortcomings of the data.

As indicated earlier in the description of the structure, the activities of the local police supervisors are discussed in a 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, the local police 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. For this Environmental Enforcement Report 2010 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 (2.3) must therefore be read together with the evaluation of the local environmental enforcement policy pursued (2.4).

As the Environmental Enforcement Report 2010 is only the second report to be published by the VHRM, and this was also only the second time the environmental enforcement actors were questioned by the VHRM, it was again decided to keep the survey as brief as possible. The elaboration of the environmental enforcement report is a learning process, both for the VHRM itself and for the questioned environmental enforcement actors. However, 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 of what the environmental enforcement actors and supervisors did during 2010 in terms of inspections 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.

This second environmental enforcement report has its limits, although it is a next step in the evaluation of environmental enforcement policy in the Flemish Region and the further implementation of the Environmental Enforcement Act in 2010.

### 1.3 Environmental Enforcement Policy

Naturally, the activities of the environmental enforcement actors in Flanders in 2010 were not carried out at random. The environmental enforcement policy in the Flemish Region is determined, among other things, by the Coalition Agreement of 15 July 2009<sup>9</sup>, the Policy Memorandum on Environment and Nature 2009-2014<sup>10</sup> and the Policy Paper on Environment and Nature 2010-2011<sup>11</sup> of Minister Schauvliege.

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

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

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9 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)

10 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)

11 The entire 'Policy Paper on Environment and Nature 2010-2011' can be consulted at the following URL: [http://www.lne.be/themas/beleid/beleidsplanning/beleidsplanning-pdfs-en-subpaginas/Beleidsbrief\\_Leefmilieu\\_en\\_Natuur\\_2010-2011.pdf](http://www.lne.be/themas/beleid/beleidsplanning/beleidsplanning-pdfs-en-subpaginas/Beleidsbrief_Leefmilieu_en_Natuur_2010-2011.pdf)

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The Policy Memorandum 2009-2014 on Environment and Nature of the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, defines, among other things, the elaboration 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 the environmental enforcement policy will be determined taking into account the recommendations in the annual environmental enforcement programmes, drawn up under the auspices of the Flemish High Council of Environmental Enforcement. Enforcement practice will be evaluated in terms of effectiveness and efficiency, among other things through the annual environmental enforcement reports. Cooperation agreements between the different environmental enforcement actors will, when considered useful, be embedded 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 more environmental relevance (such as Seveso and IPPC companies) and on waste chain enforcement. Enforcement must shift 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 the inspection of self-monitoring activities of companies are central. Attention must also be paid to the monitoring of unlicensed plants 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 collaboration 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 of Flanders'<sup>12</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 each year 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 of Flanders' on local enforcement are yet to become clear.

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<sup>12</sup> The entire White Paper 'Internal Reform of the Federated State of Flanders' 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)

In the Policy Paper on Environment and Nature 2010-2011 the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, refers in the context of environmental enforcement to the Flanders in Action key project<sup>13</sup> 51-2 'Fully implementing the Environmental Enforcement Act with attention to the evaluation tracks and the impact thereof'. One of the objectives of the new Environmental Enforcement Act is to take appropriate action in case of violations against environmental law (environmental health law and nature protection law) in a standardised manner. Meanwhile, a framework has been established with criteria for determining the amount of the fine. For each type of environmental offence (such as illegal dumping, waste incineration, discharges, possession of illegal birds, deforestation, noise pollution, etc.) criteria have been defined with regard to the seriousness, frequency and circumstances which are to be taken into account and which are also included in the motivation for the decision to impose a fine. It goes without saying that this framework will be further fine-tuned and elaborated depending on new cases. The instrument 'deprivation of benefits' has not yet been applied very often so far (only on an ad hoc basis), pending the results of the relevant study. The different parties involved meet each month in the LNE working group on Environmental Enforcement. The merit of this working group is to discuss practical questions about the application and interpretation of the new Environmental Enforcement Act and Decree and the coordination and evaluation of possible changes to this legislation. Within the framework of the Flemish High Council of Environmental Enforcement four sub-working groups were established and their agendas for the coming year were determined. No protocols have been concluded yet, but work arrangements have already been made in the context of these sub-working groups. An Environmental Enforcement Programme 2011 was drawn up which defines the enforcement priorities for the next year. In the autumn of 2010, the Flemish High Council of Environmental Enforcement approved the Environmental Enforcement Report 2009 in which the environmental enforcement policy is evaluated as of May 2009. In the framework for supervision and inspection laid down by the Flemish Parliament Act, support is granted to supervisors and criminal investigators. As a result of the growing number of local (municipal, intermunicipal and police district) supervisors, the regional Environmental Inspectorate will be able to concentrate more on plants with more environmental relevance (such as Seveso and GPBV companies) and on waste chain enforcement.

As regards the Cooperation Agreement 2008-2013 in particular and the local environmental enforcement in general, reference can be made again to the aforementioned relevant remark.

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, notably by annually drawing up the environmental enforcement report and the environmental enforcement programme. The Environmental Enforcement Report 2009 and the Environmental Enforcement Programmes 2010 and 2011 not only contain strategic policy recommendations, but also operational recommendations addressed to the environmental enforcement actors themselves. The drawing up 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. In that sense not only the Environmental Enforcement Programmes 2010 and 2011 provide a framework for this Environmental Enforcement Report 2010, but especially the comparison with the data from the Environmental Enforcement Report 2009 may generate interesting insights.

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13 <http://vlaandereninactie.be/?lang=en>



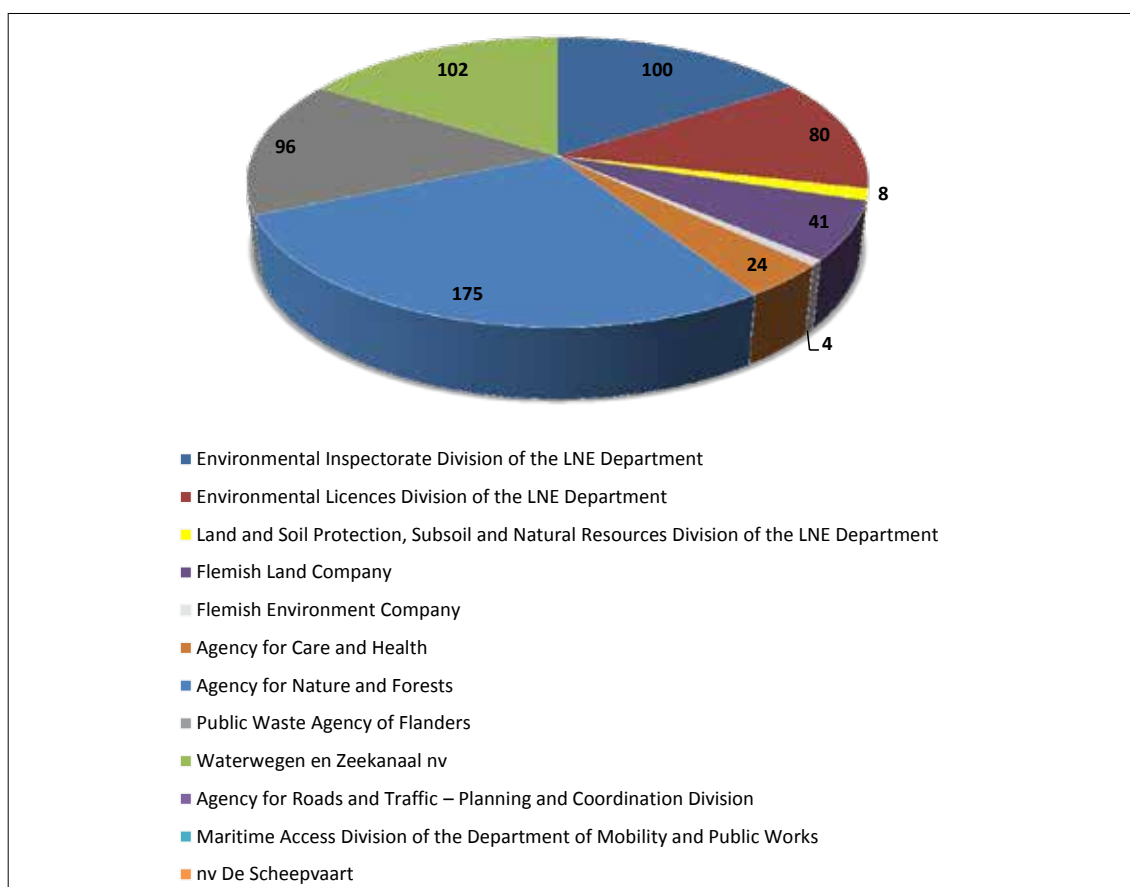
## 2. Evaluation of the Flemish Environmental Enforcement Policy in 2010

The purpose of this chapter is to evaluate the Flemish environmental enforcement policy from 1 January 2010 through 31 December 2010. 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 refers to the enforcement and supervision activities of the different actors that were active in the Flemish Region in 2010. 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 2009.

### 2.1 Evaluation of the regional environmental enforcement policy

#### 2.1.1 Appointed regional supervisors

The graph below shows the number of supervisors used by the regional enforcement actors in 2010.



Graph 1 Number of supervisors per regional enforcement actor

The Environmental Enforcement Act stipulates in Article 16.3.1 that the personnel of the department and the agencies belonging to 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 Licences 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. In 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 could appoint supervisors as well.

In 2010 the Secretary-General of the Department of Environment, Nature and Energy did not carry out any supervisory duties, since the provision assigning supervisory duties to him<sup>14</sup> only entered into effect on 24 December 2010<sup>15</sup>. For this reason this enforcement actor has not been included in the graph above and the tables below.

In the questionnaire the regional supervisory bodies were therefore asked to indicate the number of supervisors, appointed by the Government of Flanders, they had at their disposal in 2010. The result is reflected in the graph above and the table below.

Regional enforcement actor	Number of supervisors
Environmental Inspectorate Division of the LNE Department	100
Environmental Licences Division of the LNE Department	80
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	8
Flemish Land Agency	41
Flemish Environment Agency	4 <sup>16</sup>
Agency for Care and Health	24
Agency for Nature and Forests	175 <sup>17</sup>
Public Waste Agency of Flanders	96
Waterwegen en Zeekanaal NV	102
Agency for Roads and Traffic - Planning and Coordination Division	Not available
Maritime Access Division of the Department of Mobility and Public Works	0
nv De Scheepvaart	0
Regional enforcement actor	Number of supervisors

*Table 1 Number of supervisors per regional enforcement actor*

Article 16.3.2 stipulates that only persons with the necessary qualifications and characteristics to adequately perform the supervisory duties can be appointed as supervisors.

A large share of the regional enforcement bodies had a number of supervisors at their disposal in 2010. The fact that the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart did not yet have a supervisor at their disposal in 2010 or could not indicate the number of supervisors<sup>18</sup> – as shown from the table above - can probably be related to the

14 Decree implementing Title XVI of DABM Article 20/1. "Without prejudice to the supervisory duties laid down in this Decree, the leading civil servant of the Department shall monitor compliance with the legislation, referred to in Articles 21 through 32 of this Decree. The leading civil servant of the Department shall use this authority in exceptional circumstances."

15 Flemish Government Decree of 19 November 2010 amending various provisions of the Flemish Government Decree of 19 November 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy and the Flemish Government Decree of 23 December 2005 establishing an internally autonomous agency without legal personality 'Agency for Nature and Forests'; Belgian Official Journal of 14 December 2010.

16 2010 is the first year in which the Flemish Environment Agency had supervisors at its disposal. Therefore, investments were mainly made in training. At the beginning of 2011, the number of supervisors was extended.

17 Excluding 96 supervisors from the Policy Division of the Agency for Nature and Forests who only have right of access but are not authorised to identify environmental infringements or environmental offences; therefore they are not included in the aforementioned figure.

18 The Agency for Roads and Traffic - Planning and Coordination Division indicated in the questionnaire that it had a supervisor at its disposal, but that the number of supervisors was not available.

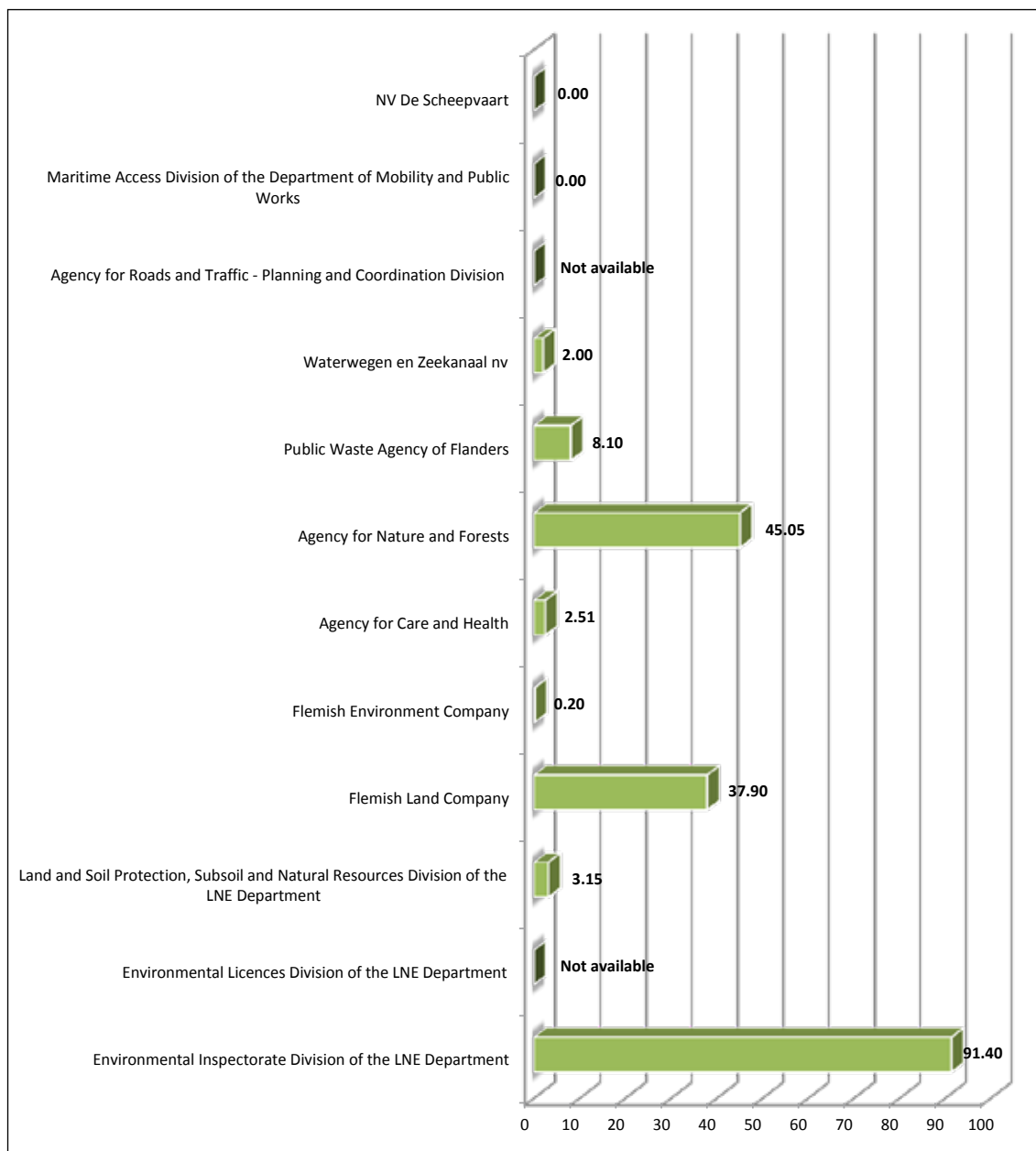
fact that they could not appoint any supervisors until the autumn of 2010.

The exact number of supervisors who were appointed and were available to perform environmental enforcement duties in 2010 differs greatly. Some enforcement actors had a large number of supervisors at their disposal 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 had been assigned a great number of competences; in these cases the supervisors were engaged almost full-time in their supervisory duties; other actors only had to enforce a limited number of laws and Flemish Parliament Acts and as a result had to appoint fewer supervisors for this purpose, since enforcement is an additional task for them; in some cases a limited number of supervisors suffices to perform the limited number of duties. In addition it is also possible for an enforcement organisation 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, who 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.

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

Because the number of appointed supervisors (as stated above) does not offer a complete and correct picture of the enforcement duties that were effectively performed, the regional supervisory bodies were also asked to indicate how many full-time equivalents (FTEs) had been dedicated to enforcement duties in 2010. As indicated earlier, it is true that the Environmental Enforcement Act does not determine the number of FTEs that should be dedicated to enforcement duties, but the number of FTEs does provide a clearer and more balanced picture of the effective efforts in the area of environmental enforcement.

The total amount of time dedicated to environmental enforcement duties by the regional supervisory bodies – expressed in FTEs – can be presented by means of the following graph. It shows both the number of FTEs dedicated by the 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.



Graph 2 Efforts related to environmental enforcement duties in FTEs

The above graph clearly shows that there are indeed differences between the ways in which the regional enforcement bodies organise the implementation of their duties. For instance, the Environmental Inspectorate Division has 100 supervisors in total and the total amount of time dedicated to environmental enforcement duties is 91.4 FTEs, whereas the Public Waste Agency of Flanders has a ratio of 96 supervisors in total and 8.1 FTEs. Another example is the Flemish Land Agency with 41 supervisors in 2010 and a total of 37.9 FTEs dedicated to enforcement duties, whereas Waterwegen en Zeekanaal NV had 102 appointed supervisors at its disposal in 2010, but dedicated only 2 FTEs in total to enforcement duties.

The fact that the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart did not yet dedicate any FTEs to environmental law enforcement in 2010 or the number of FTEs was not available - as shown from the above table - is owing to the fact that in 2010 no supervisors were appointed yet. This can in itself be explained by the fact that they were not

allowed to appoint supervisors until the amendment decree of the Government of Flanders of 19 November 2010 had entered into effect.

It is remarkable that the Environmental Licences Division of the Department of Environment, Nature and Energy could not inform the Flemish High Council of Environmental Enforcement about the number of FTEs dedicated to environmental enforcement duties, since no specific time registration was done in 2010. However, in the Environmental Enforcement Report 2009 a total of 84 supervisors were recorded and a total of 0.15 FTEs were dedicated to enforcement duties. For 2010 the Environmental Licences Division reported that it had 80 supervisors at its disposal, but it was not mentioned how many FTEs these supervisors dedicated to environmental enforcement duties. However, the Environmental Licences Division can also be given as an example of an entity that has appointed a large number of its officers as supervisors, whereas these supervisors dedicate only a very limited amount of time to enforcement duties. In fact, the Environmental Licences Division specified that the enforcement duties of this Division pertain to a very specific aspect of environmental health law, i.e. certain registrations. In the day-to-day activities each adviser of the Environmental Licences Division frequently comes into contact with the work of these registration holders. For this reason it was deliberately decided to appoint the advisers as supervisors and to optimally organise this by providing centralised support. However, it is also possible that a lot of staff members are appointed as supervisors to have an extra pair of eyes in the field and that each staff member who identifies an offence or infringement is actually allowed to officially report this, as can be assumed in the case of Waterwegen en Zeekanaal NV. Still, the contrary also occurs with other regional enforcement bodies. There are indeed organisations, such as the Flemish Land Agency, where the appointed supervisor is engaged nearly full-time in environmental law enforcement.

However, the question can be raised as to whether it is expedient to combine the function of supervisor with other functions, since the amount of time some actors dedicate to enforcement duties turns out 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 perform the enforcement duties 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 duties rather than generalists for whom environmental law enforcement is an additional duty on top of their already existing duties.

Contrary to the Environmental Enforcement Report 2009, the environmental enforcement actors were asked to break down the total number of FTEs dedicated to environmental enforcement duties into the number of FTEs dedicated by supervisors to environmental enforcement duties and the number of FTEs dedicated to the administrative support of environmental enforcement duties. It seemed interesting to the Flemish High Council of Environmental Enforcement to examine how much time was available for supervision and how much time had to be made available for the administrative support of this supervision. The result is shown in the table below.

Regional enforcement actor	Total FTEs dedicated to environmental enforcement duties	FTEs dedicated by supervisors to environmental enforcement duties	FTEs dedicated to administrative support of environmental enforcement duties
Environmental Inspectorate Division of the LNE Department	91.40	81.10	10.30
Environmental Licences Division of the LNE Department	Not available <sup>19</sup>	Not available <sup>20</sup>	Not available <sup>21</sup>
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	3.15	2.95	0.20
Flemish Land Agency	37.90	35.60	2.30
Flemish Environment Agency	0.20	0.20	0.00
Agency for Care and Health	2.51	2.20	0.31
Agency for Nature and Forests	45.05 <sup>22</sup>	41.05	4.00
Public Waste Agency of Flanders	8.10	6.10	2.00
Waterwegen en Zeekanaal NV	2.00	1.00 <sup>23</sup>	1.00
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	0.00	0.00	0.00
Nv De Scheepvaart	0.00	0.00	0.00

Table 2 Efforts related to environmental enforcement duties in FTEs

It shows from the table above that a large number of the environmental enforcement actors dedicated a considerable amount of time to administrative environmental enforcement duties<sup>24</sup>. Waterwegen en Zeekanaal NV, for instance, dedicated no less than 50% of the time spent on environmental enforcement duties to the administrative support of these duties. In 2010, this amounted to nearly 25%<sup>25</sup> within the Public Waste Agency of Flanders, to over 12% within the Agency for Care and Health and to more than 11% within the Environmental Inspectorate Division. Other enforcement actors could limit the amount of time dedicated to administrative support and focus increasingly on the environmental enforcement duties carried out by the supervisors. Within the Agency for Nature and Forests the administrative support took up only 8.88% of the total amount of time dedicated to environmental enforcement duties and within the Land and Soil Protection, Subsoil and Natural Resources Division and within the Flemish Land Agency this amounted to just over 6%. The Flemish Environment Agency did not even spend any time at all on administrative support.

The fact that the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart did not yet dedicate any FTEs to the administrative support of environmental enforcement duties in 2010 or the number of FTEs was not available - as shown from the

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

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

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

22 Excluding the FTEs dedicated by the Management Division of the Agency for Nature and Forests (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.

23 Indicated in the questionnaire as <1.

24 There is a possibility that the individual enforcement actors have interpreted the concept 'administrative support' differently. Therefore, this concept will be defined for the survey of these actors in the context of the Environmental Enforcement Report 2011.

25 As far as the Public Waste Agency of Flanders (OVAM) is concerned, the administrative support mainly implies the support in enforcement activities of third parties (cf 930 inspections in 2010 to support other bodies), supplemented with training, replies to judicial orders and referring information/complaints etc. for which OVAM itself does not have any enforcement authority.

above table - is owing to the fact that in 2010 no supervisors were appointed yet and therefore no FTEs at all were dedicated to environmental enforcement duties. This can in itself be explained by the fact that they were not allowed to appoint supervisors until the amendment decree of the Government of Flanders of 19 November 2010 had entered into effect.

Since the administrative procedures under the Environmental Enforcement Act are usually the same for all the environmental enforcement actors, it may be useful within this framework to examine why certain actors dedicated a great amount of time to the administrative support of the environmental enforcement duties of the supervisors and how this can possibly be reduced to a lower percentage. The enforcement actors who dedicated less time to this administrative support may offer the best practices.<sup>26</sup> It indeed seems understandable that these administrative duties are best reduced to a minimum and the majority of the time available is dedicated to supervisory and inspection duties.<sup>27</sup> If it were to turn out - for instance in future environmental enforcement reports - that no administrative simplification could be realised within the organisations themselves, it may be opted to more closely examine the administrative procedures in the Environmental Enforcement Act in view of a potential simplification.

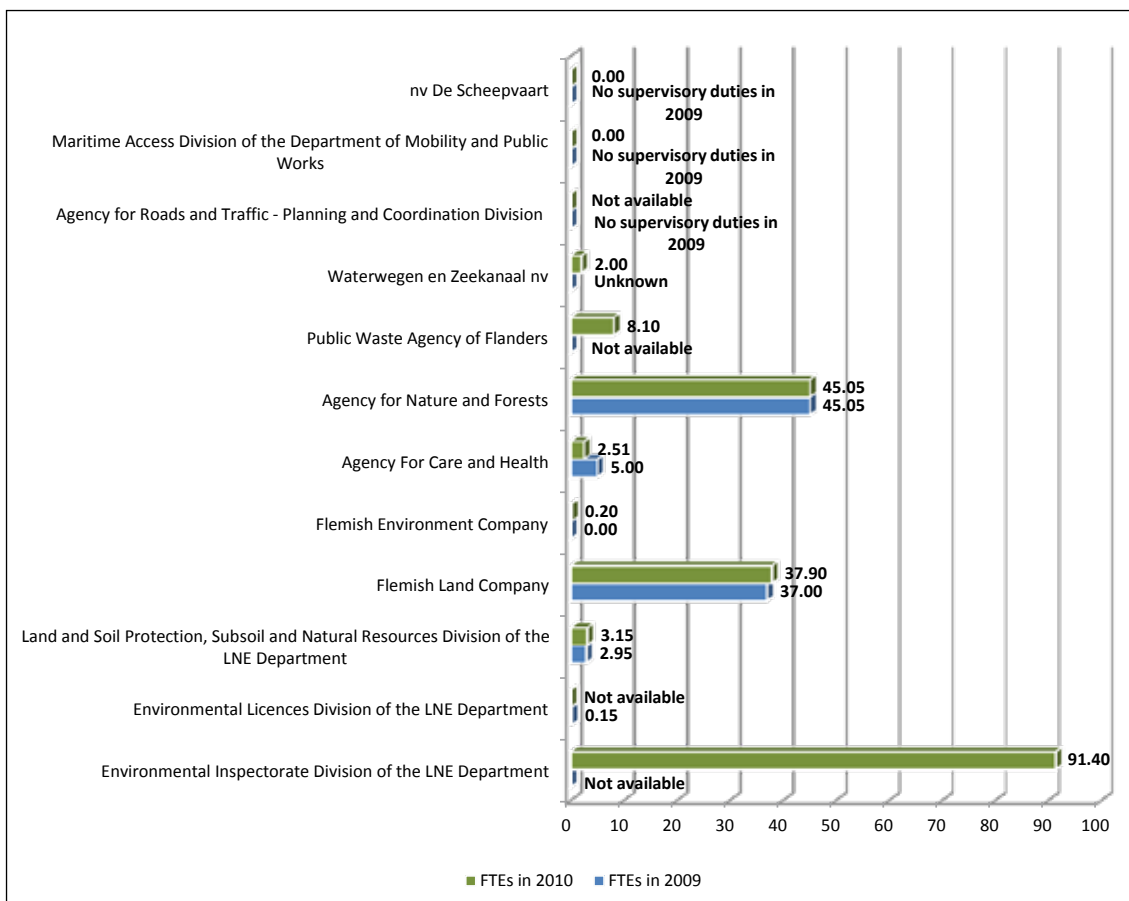
As indicated earlier, the Flemish High Council of Environmental Enforcement will make a comparison in this report with the data from the Environmental Enforcement Report 2009. This will not only give a picture of the evolution of the enforcement activities of the different actors, but also of the evolution in the implementation of the Environmental Enforcement Act. Because the Environmental Enforcement Report 2009 only covers the period from 1 May 2009 (entry into force of the Environmental Enforcement Act) to 31 December 2009 and the Environmental Enforcement Report 2010 pertains to the 2010 calendar year as a whole, a relative comparison or a comparison in terms of percentage will each time be made. However, the graph and table below are an exception to this, since they refer to the full-time equivalents available within the organisation for the performance of enforcement duties. The fact that the data from the Environmental Enforcement Report 2009 only refer to the period from 1 May 2009 to 31 December does not have any bearing on a comparison of the absolute figures.

The graph and table below thus provide an insight into the total number of FTEs that were available to the different regional environmental enforcement actors for the performance of enforcement duties in 2009 and 2010. For the Environmental Enforcement Report 2009 the actors were asked to give the total number of FTEs that were dedicated to enforcement duties. For the Environmental Enforcement Report 2010, however, this question was broken down into the number of FTEs that were dedicated by the 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. In order to make a comparison between 2009 and 2010 possible, the latter two will of course be added together.

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26 As far as the Public Waste Agency of Flanders (OVAM) is concerned, the administrative support mainly implies the support in enforcement activities of third parties (cf 930 inspections in 2010 to support other bodies), supplemented with training, replies to judicial orders and referring information/complaints etc. for which OVAM itself does not have any enforcement authority.

27 The Environmental Inspectorate Division reports that its very aim is to optimise the support given to supervisors in their supervision and enforcement duties, among other things by calling in the services of administrative officers, and by introducing a supporting file management system and a template system.



Graph 3 Comparison of the total efforts related to environmental enforcement duties in FTEs in 2009 and 2010



Regional enforcement actor	Total number of FTEs in 2009	Total number of FTEs in 2010
Environmental Inspectorate Division of the LNE Department	Not available <sup>28</sup>	91.4
Environmental Licences Division of the LNE Department	0.15	Not available <sup>29</sup>
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	2.95	3.15
Flemish Land Agency	37	37.9
Flemish Environment Agency	0	0.20
Agency for Care and Health	5	2.51
Agency for Nature and Forests	45.05	45.05
Public Waste Agency of Flanders	Not available	8.10
Waterwegen en Zeekanaal NV	Unknown	2
Agency for Roads and Traffic - Planning and Coordination Division	-	Not available
Maritime Access Division of the Department of Mobility and Public Works	-	0.00
Nv De Scheepvaart	-	0.00

*Table 3 Comparison of the efforts related to environmental enforcement duties in FTEs in 2009 and 2010*

The comparison can only be made for those actors whose data regarding the total number of FTEs available for environmental enforcement duties are available to the VHRM for both 2009 and 2010. No data are available for 2009 for the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart, since they neither performed any supervisory duties nor had any supervisors at the time. The fact that no FTEs were made available in 2010 for the performance of enforcement duties is owing to the fact that no supervisors were appointed yet in 2010. This can in turn be explained by the fact that they did not have the possibility to appoint a supervisor until the entry into effect of the amendment decree of the Government of Flanders of 19 November 2010.

For 2009, the Flemish High Council of Environmental Enforcement does not have any data at its disposal regarding the number of FTEs dedicated to environmental enforcement duties for Waterwegen en Zeekanaal NV as well as for the Public Waste Agency of Flanders. These data could be delivered, however, for 2010. It is impossible to make a comparison, although it may be assumed that both enforcement actors kept these data for 2010 up to date in view of relevant reporting for the Flemish High Council of Environmental Enforcement. Such a comparison will probably be possible in future environmental enforcement reports.

For the Environmental Enforcement Report 2009 the Environmental Inspectorate Division only gave the number of FTEs for the supervisors and not the total number of FTEs dedicated to environmental enforcement duties. Again, this makes it impossible to make a comparison between 2009 and 2010.

With regard to the Flemish Environmental Enforcement Report 2009 the Environmental Licences Division

28 For the Environmental Enforcement Report 2009 the Environmental Inspectorate Division has only given the FTEs of the supervisors and not the total number of FTEs that were dedicated to enforcement duties. As a result, no comparison can be made now between the total number of FTEs dedicated to enforcement duties (by the supervisors and the administrative support of environmental enforcement duties) in 2009 and 2010.

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

reported that 0.15 FTEs were dedicated to enforcement duties. These data turned out to be no longer available for the Environmental Enforcement Report 2010, since no specific time registration was done by the Environmental Licences Division. As a result, it was impossible to express the amount of time dedicated in FTEs. Naturally, the Flemish High Council of Environmental Enforcement hopes that the Environmental Licences Division will register these data in 2011 in view of the reporting for the next environmental enforcement report.

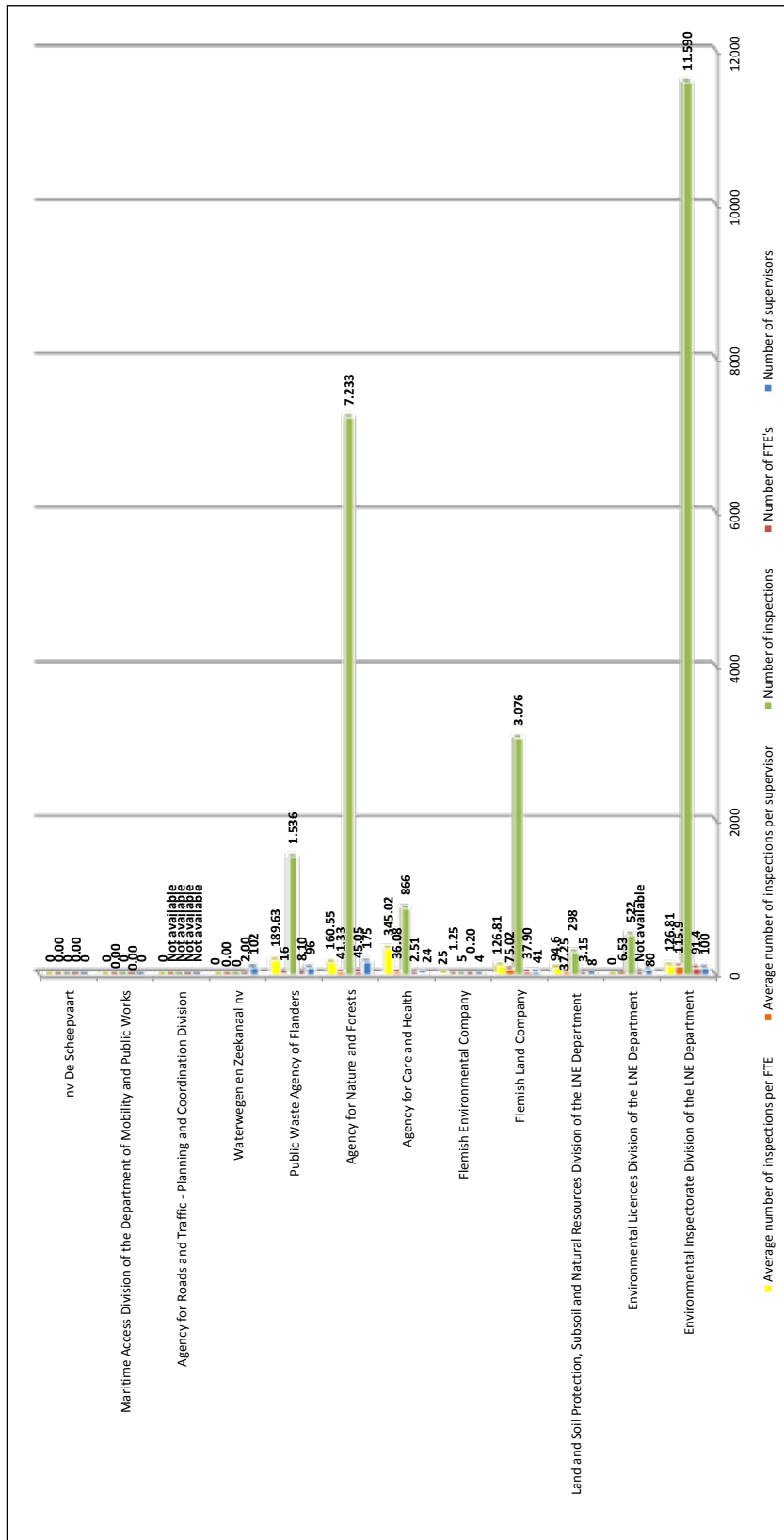
A striking element is that some actors dedicate more FTEs to environmental law enforcement with the same or even a smaller number of supervisors. Within the Land and Soil Protection, Subsoil and Natural Resources Division the number of appointed supervisors remained at 8, but the number of FTEs dedicated to environmental enforcement duties rose by 0.2 FTEs. The Flemish Land Agency used only 41 supervisors in 2010, whereas their number still amounted to no less than 42 in 2009. It is remarkable, however, that an additional 0.9 FTEs were made available for environmental enforcement duties. Whereas the Flemish Environment Agency had appointed 4 supervisors in 2009, but did not dedicate any FTEs to enforcement duties, 0.2 FTEs were made available in 2010. In 2010, the Agency for Nature and Forests appointed 9 additional supervisors. Yet the number of FTEs dedicated to environmental enforcement duties remained the same. In 2009, the Agency for Care and Health had dedicated 27 supervisors and 5 FTEs to enforcement duties. In 2010, the number of appointed supervisors fell to 23, but the number of FTEs decreased by no less than 50%.

One positive element to stress, however, is that the number of available FTEs dedicated to environmental enforcement duties stayed the same or increased with most regional enforcement actors. This can only benefit environmental law enforcement.

In order to be able to better place the efforts of the regional supervisory bodies in the area of environmental enforcement in their context, these actors were asked how many inspections they carried out in 2010. When the Environmental Enforcement Report 2009 was drawn up the various enforcement actors used a different definition for the term 'inspection'. Naturally, this resulted in data which could not really be optimally compared. For this reason, the Flemish High Council of Environmental Enforcement formulated a definition for the term 'inspection' in the questionnaire in view of the drawing up of the Environmental Enforcement Report 2010. This definition reads 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' and 'inspections of documents'. By formulating a clear definition, the Flemish High Council of Environmental Enforcement can guarantee to some extent the comparability of the received data. Because not only the term 'inspection' was interpreted differently by the questioned enforcement actors, but for instance also the terms 'nuisance-causing plant' and 'identification report', the Flemish High Council of Environmental Enforcement has developed, through its working group 'Information Exchange', a VHRM glossary in which the different terms relating to environmental law enforcement are listed and defined. The initial idea was to make clear to the enforcement actors who receive the VHRM questionnaire within the framework of the environmental enforcement report what is meant by the terms in the questionnaire. However, it turned out to be useful to adopt a wider approach to the VHRM glossary, since such a glossary may also prove a valuable tool for the supervisors. For this reason, as many relevant terms as possible were explained. The VHRM glossary is available at the website of the Flemish High Council of Environmental Enforcement.<sup>30</sup>

The graph and table below include the number of supervisors, the number of FTEs and the number of inspections. A comparison is also made by dividing the number of inspections by the number of supervisors in order to obtain the average number of inspections per supervisor. In addition, an overview is also given of the average number of inspections per FTE.

<sup>30</sup> <http://www.vhrm.be/voor-de-toezichthouder/glossarium>



Graph 4 Efforts related to environmental enforcement duties

Regional enforcement actor	Number of supervisors	Number of FTEs	Number of inspections	Average number of inspections per supervisor	Average number of inspections per FTE
Environmental Inspectorate Division of the LNE Department	100	91.40	11,590	115.9	126.81
Environmental Licences Division of the LNE Department	80	Not available <sup>31</sup>	522 <sup>32</sup>	6.53	Not available
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	8	3.15	298	37.25	94.60
Flemish Land Agency	41	37.9	3.076 <sup>33</sup>	75.02	81.16
Flemish Environment Agency	4	0.20	5	1.25	25
Agency for Care and Health	24	2.51	866	36.08	345.02
Agency for Nature and Forests	175	45.05	7.233 <sup>34</sup>	41.33	160.55
Public Waste Agency of Flanders	96	8.10	1.536 <sup>35</sup>	16.00	189.63
Waterwegen en Zeekanaal NV	102	2.00	0 <sup>36</sup>	0.00	0.00
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available	Not available <sup>37</sup>	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	0	0.00	0	0.00	0.00
Nv De Scheepvaart	0	0.00	0	0.00	0.00

Table 4 Efforts related to environmental enforcement duties

Besides the number of environmental enforcement inspections that were carried out, the average number of inspections per supervisor is another possible perspective from which to look at the efforts made by the regional enforcement actors. What is striking is that a certain asymmetry can be observed between some enforcement actors. The Environmental Inspectorate Division, for instance, records the highest number of inspections per supervisor, namely 115.90. Still, environmental law enforcement is the only duty of this division. Therefore, the Environmental Inspectorate Division can dedicate a large number of FTEs to this end. As far as ANB is concerned, the 45.5 specified FTEs are also engaged full-time in enforcement duties. However, the majority of the appointed 175 supervisors are foresters who usually carry out their supervisory duties together with their management duties and for whom the supervisory duties take up only a small share of their duties as a whole. With the foresters, the performance of enforcement duties was estimated at 8 FTEs. For the other regional bodies the enforcement duties were duties that came on top of their already extensive set of duties. As a result, it is more difficult for them to specialise and therefore the high number of the Environmental Inspectorate Division must be put into perspective in this light. The Environmental Licences Division has 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 of liquid and gaseous fuel

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

32 410 inspections of liquid and gaseous fuel engineers (309 inspections and 101 re-inspections after inspections with an unacceptable measurement result); 12 inspections of laboratories (8 water + 4 air); 100 inspections of environmental coordinators (inspection of in-service training); numerous inspections of registration holders are carried out and at the same time advice is given; numbers are not registered.

33 These are inspections within the framework of the Environmental Enforcement Act and the Flemish Parliament Act on manure.

34 The number of 7,233 inspections is an estimate of the total number of inspections that were carried out and is based on the number of official reports drawn up, the number of exhortations that were formulated and the number of inspections during which no breach was identified.

35 606 environmental enforcement inspections carried out in 2010 + support in 930 environmental enforcement inspections carried out in 2010.

36 No specific action, is included in the daily inspection of/along waterways.

37 The Agency for Roads and Traffic did not indicate a total number of inspections on the questionnaire.

engineers were carried out (309 inspections and 101 re-inspections after inspections with an unacceptable measurement result), 12 inspections of laboratories and 100 inspections of the in-service training of environmental coordinators. However, it must 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 itself, but by an accredited inspection body<sup>38</sup>. The average number of inspections per supervisor of the Environmental Licences Division must be reduced from 6.53 to 1.4. The Public Waste Agency of Flanders indicated having carried out 1,536 inspections in 2010. As a result, the average number of inspections per supervisor was calculated at 16. Out of these 1,536 inspections, 606 were carried out by the Public Waste Agency of Flanders, while this Agency provided support to other enforcement bodies in 930 environmental enforcement inspections. Consequently, the average number of inspections per supervisor is 6.31 and not 16, as included in the above table and graph. The average number of inspections per supervisor with the Flemish Land Agency, namely 1.61, gives a distorted picture, as it only registered the inspections in 2010 during which a breach was identified. This means that only those inspections during which an environmental offence was identified were reported to the Flemish High Council of Environmental Enforcement. In reality the average number of inspections per supervisor is thus higher than the calculated 1.61. A distorted picture is also given for Waterwegen en Zeekanaal NV, since it is reported in the table and graph above that Waterwegen en Zeekanaal NV did not carry out any inspections in 2010. Waterwegen en Zeekanaal NV clarified that it did not take any specific actions and that the environmental enforcement inspections are embedded in the daily inspections of/along waterways. The Agency for Roads and Traffic reported to the Flemish High Council of Environmental Enforcement that the number of inspections and supervisors and the number of FTEs dedicated to environmental enforcement were not available. Therefore, the question can be raised as to who carried out these inspections, since it could not be indicated whether and how many supervisors had been appointed.

Yet, another picture is gained when the number of performed inspections is compared against the total number of FTEs dedicated to enforcement duties. With all enforcement actors this average was much higher than the number of inspections per supervisor. With the Environmental Inspectorate Division the average number of inspections per FTE is 126.81. With the Agency for Nature and Forests this number is 160.55, with the Public Waste Agency of Flanders 189.63<sup>39</sup> and with the Agency for Care and Health even 345.02. These figures thus give a completely different picture of the activities of the regional supervisors.

This may be owing to the type of inspections and to the difference in amount of time that is dedicated to these inspections.

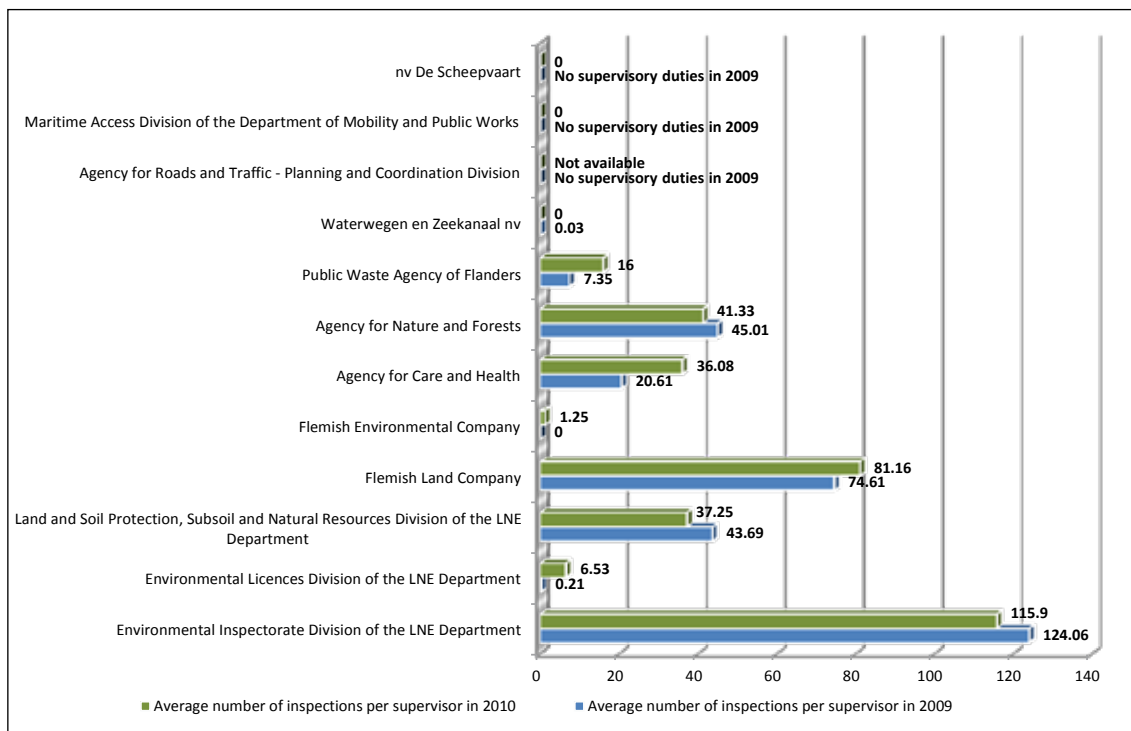
It was impossible to calculate the average number of inspections per FTE for the Environmental Licences Division, since the number of available FTEs dedicated to enforcement duties was not available. No specific time registration was done by the Environmental Licences Division in 2010. As a result, it is impossible to express the amount of time dedicated in FTEs.

The fact that for the Maritime Access Division of the Department of Mobility and Public Works and *De Scheepvaart* the comparative assessment of the average number of inspections per supervisor and the average number of inspections per FTE is zero, is owing to the fact that in 2010 no supervisors were appointed yet and therefore no environmental enforcement inspections were carried out. This can in itself be explained by the fact that they were not allowed to appoint supervisors until the amendment decree of the Government of Flanders of 19 November 2010 had entered into effect.

38 The fact is, however, that during these inspections the supervisors perform certain activities, among other things in the field of planning, attendance at inspections upon request, monitoring, hearings, and the subsequent enforcement.

39 As far as the Public Waste Agency of Flanders (OVAM) is concerned, the administrative support mainly implies the support to enforcement activities of third parties (cf 930 inspections in 2010 to support other bodies), supplemented with training, replies to judicial orders and referring information/complaints etc. for which OVAM itself does not have any enforcement authority. Since the average number of inspections per FTE was calculated on the basis of the total number of FTEs dedicated to enforcement duties, the total number of performed inspections (including support) given by OVAM was compared against the indicated total number of FTEs dedicated to enforcement duties.

The graph and table below show the comparison of the average number of inspections per regional supervisor in 2009 and 2010.



Graph 5 Comparison of the average number of inspections per regional supervisor in 2009 and 2010

Regional enforcement actor	Average number of inspections per supervisor in 2009	Average number of inspections per supervisor in 2009 (reduced to 12 months)	Average number of inspections per supervisor in 2010
Environmental Inspectorate Division of the LNE Department	82.71	124.06	115.90
Environmental Licences Division of the LNE Department	0.14	0.21	6.53
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	29.13	43.69	37.25
Flemish Land Agency	49.74	74.61	81.16
Flemish Environment Agency	0.00	0.00	1.25
Agency for Care and Health	13.74	20.61	36.08
Agency for Nature and Forests	45.01	45.01 <sup>40</sup>	41.33
Public Waste Agency of Flanders	7.35	7.35 <sup>41</sup>	16 <sup>42</sup>
Waterwegen en Zeekanaal NV	0.02	0.03	0.00
Agency for Roads and Traffic - Planning and Coordination Division	-	-	Not available
Maritime Access Division of the Department of Mobility and Public Works	-	-	0.00
Nv De Scheepvaart	-	-	0.00

*Table 5 Comparison of the average number of inspections per regional supervisor in 2009 and 2010*

The aforementioned comparison cannot be made for the Flemish Land Agency, Waterwegen en Zeekanaal NV, the Agency for Roads and Traffic, the Maritime Access Division and nv De Scheepvaart. The latter three bodies did not have a supervisor yet in 2010 as laid down in the Environmental Enforcement Act. This is due to the fact that they could not appoint any supervisors until the amendment decree of the Government of Flanders of 19 November 2010 had entered into effect. Waterwegen en Zeekanaal NV, on the other hand, did have supervisors at its disposal, namely 102. However, they could not specify how many inspections were carried out in 2010, since they had not organised any specific enforcement activities and the environmental enforcement inspections are embedded in the daily inspections of/along waterways. In view of the drafting of the Environmental Enforcement Report 2010 the Flemish Land Agency reported only those inspections during which an environmental offence was actually identified. As a result, the Flemish High Council of Environmental Enforcement does not have any insight into the total number of inspections that were carried out in 2010, in contrast to the data which the Flemish Land Agency reported within the framework of the Environmental Enforcement Report 2009.

This comparison can be made for the other regional enforcement actors, although this must be put in the right context. At first sight, it seems indeed as if nearly all the enforcement actors registered a higher average number of inspections per supervisor in 2010. However, the average number of inspections per supervisor in 2009 only refers to the period from 1 May 2009 to 31 December 2009, whereas the data of 2010 refer to an entire calendar year. Therefore, the 2009 data must be reduced in terms of percentage or be interpreted over an entire calendar year. This presents the picture more in the right context. In 2009 the Environmental Inspectorate Division still recorded an average of 124.06 inspections per supervisor, whereas in 2010 this decreased to an average of 115.9 inspections per supervisor. The Agency for Nature and Forests, the Public Waste Agency of Flanders and the Land and Soil Protection, Subsoil and Natural Resources Division also reported a decrease in the average number of inspections per supervisor, viz. respectively from an average of 45.01 inspections per supervisor to 41.33 inspections, from an average of 7.35 inspections to 6.31<sup>43</sup> inspections per supervisor and from an average of 43.69 inspections per supervisor to 37.25 inspections. This less favourable evolution raises questions as to what caused it, since this cannot be found out on the basis of the present figures. For the Environmental Licences Division the average number of inspections per supervisor rose from 0.21 in 2009, to 1.4<sup>44</sup> in 2010. Those of the Flemish Environment Agency and the Agency for Care and Health also rose respectively from 0 inspections per supervisor to an average of 1.25 inspections per supervisor and from an average of 20.61 inspections per supervisor to 36.08 inspections per supervisor.

Another possible angle is to make a comparison between the number of inspections carried out by the regional supervisors per total of FTEs available for enforcement duties in 2009 and 2010. The following

- 40 The Agency for Nature and Forests reported that the average number of inspections per supervisor of 45.01 does not just refer to the period from 25 June 2009 to 31 December 2009, but that these inspections were carried out throughout the 2009 calendar year. As a result, this number need not be extrapolated to the entire calendar year 2009.
- 41 The Public Waste Agency of Flanders reported that the average number of inspections per supervisor of 7.35 does not just refer to the period from 1 May 2009 to 31 December 2009, but that these inspections were carried out throughout the 2009 calendar year. As a result, this number need not be extrapolated to the entire calendar year 2009.
- 42 The Public Waste Agency of Flanders indicated having carried out 1,536 inspections in 2010. As a result, the average number of inspections per supervisor was calculated at 16. Out of these 1,536 inspections, 606 were carried out by the Public Waste Agency of Flanders, whereas this Agency provided support to other enforcement bodies in 930 environmental enforcement inspections. As a result, the average number of inspections per supervisor is 6.31 and not 16.
- 43 The Public Waste Agency of Flanders indicated having carried out 1,536 inspections in 2010. As a result, the average number of inspections per supervisor was calculated at 16. Out of these 1,536 inspections, 606 were carried out by the Public Waste Agency of Flanders, whereas this Agency provided support to other enforcement bodies in 930 environmental enforcement inspections. As a result, the average number of inspections per supervisor is 6.31 and not 16.
- 44 The Environmental Licences Division indicated 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 re-inspections after inspections with an unacceptable measurement result), 12 inspections of laboratories and 100 inspections of the in-service training of environmental coordinators. However, it must 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 itself, but by an accredited inspection body. The average number of inspections per supervisor of the Environmental Licences Division must therefore be reduced from 6.53 to 1.4.

graphs give an overview of this. Again, the average number of inspections per FTE in 2009 must be reduced to twelve months, since the survey for the Environmental Enforcement Report 2009 only covered the period from 1 May 2009 to 31 December 2009, whereas this referred to the entire year 2010 for the Environmental Enforcement Report 2010.

Regional enforcement actor	Average number of inspections per FTE in 2009	Average number of inspections per FTE in 2009 (reduced to 12 months)	Average number of inspections per FTE in 2010
Environmental Inspectorate Division of the LNE Department	Not available <sup>45</sup>	135.35	126.81
Environmental Licences Division of the LNE Department	2120.00	2826.67	Not available
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	78.98	105.31	94.60
Flemish Land Agency	56.46	75.28	75.02
Flemish Environment Agency	0.00	0.00	25
Agency for Care and Health	74.20	98.93	345.02
Agency for Nature and Forests	165.84	165.84 <sup>46</sup>	160.55
Public Waste Agency of Flanders	Not available	Not available	189.63
Waterwegen en Zeekanaal NV	Not available	Not available	0.00
Agency for Roads and Traffic - Planning and Coordination Division	Not available	Not available	Not available
Maritime Access Division of the Department of Mobility and Public Works	Not available	Not available	0.00
Nv De Scheepvaart	Not available	Not available	0.00

*Table 6 Comparison of the average number of inspections per regional supervisor in 2009 and 2010*

For a number of enforcement actors the number of FTEs was not yet available for either 2009 or 2010. Therefore, no comparison can be made for these actors. For the other actors a decrease or increase also showed from the comparison between 2009 and 2010 on the basis of the number of inspections per supervisor and of the number of inspections per available FTE.

<sup>45</sup> The Public Waste Agency of Flanders indicated having carried out 1,536 inspections in 2010. As a result, the average number of inspections per supervisor was calculated at 16. Out of these 1,536 inspections, 606 were carried out by the Public Waste Agency of Flanders, whereas this Agency provided support to other enforcement bodies in 930 environmental enforcement inspections. As a result, the average number of inspections per supervisor is 6.31 and not 16.

<sup>46</sup> The Environmental Licences Division indicated 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 re-inspections after inspections with an unacceptable measurement result), 12 inspections of laboratories and 100 inspections of the in-service training of environmental coordinators. However, it must 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 itself, but by an accredited inspection body. The average number of inspections per supervisor of the Environmental Licences Division must therefore be reduced from 6.53 to 1.4.



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

### 2.2.1 In general

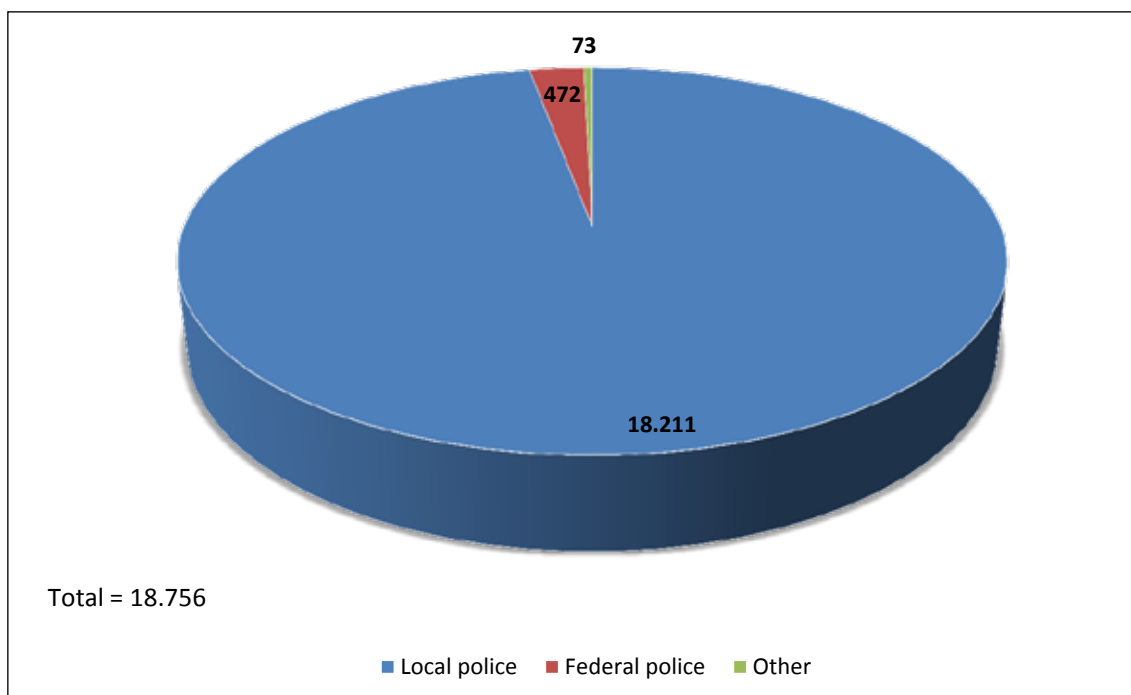
The graph and table below give an overview of the types of official reports that were drawn up with regard to the environment by police forces in 2010. The figures include both the initial official reports and the simplified official reports.<sup>47</sup> The fact that the simplified official reports are included 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 (cf Chapter 4.1).

Type of breach	Units			Total
	Local police	Federal police	Other	
Waste by professional person	498	72	3	573
Waste shipments	99	62	2	163
Waste: licence-recognition	58	4	6	68
Waste by private person	3,314	71	0	3,385
Air pollution	537	9	1	547
Water pollution	251	34	0	285
Soil pollution	86	4	1	91
Noise pollution	616	1	0	617
Environment flora fauna Destruction	299	0	0	299
Environment flora fauna Animal Welfare	760	3	9	772
Environment flora fauna Nature Protection	264	1	3	268
Environment flora fauna Licence Recognition	41	13	1	55
Environment flora fauna Other	1	0	0	1
Other phenomena regarding the environment <sup>48</sup>	11,387	198	47	11,632
<b>TOTAL</b>	<b>18,211</b>	<b>472</b>	<b>73</b>	<b>18,756</b>

Table 7 *Official reports drawn up by police forces with regard to environmental offences in 2010 for the Flemish Region*

47 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.

48 The Agency for Nature and Forests reported that the indicated number of inspections does not just refer to the period from 25 June 2009 to 31 December 2009, but that these inspections were carried out throughout the 2009 calendar year. As a result, this number need not be extrapolated to the entire calendar year 2009.



*Graph 6 Official reports drawn up by police forces with regard to environmental offences in 2010 for the Flemish Region, broken down into local police, federal police and other services*

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

The Flemish High Council of Environmental Enforcement also questioned the federal police about their activities in the field of environmental enforcement for the Environmental Enforcement Report 2010. It was asked, among other things, how many official reports were entered in the General National Database on Environmental Offences where the identifying unit belonged to the federal police. In addition, it was asked how many people within the federal police force had been actively engaged in environmental law enforcement in the Flemish Region in 2010.

Within the federal police force 143 people were part of the Environmental Network in Flanders in 2010. The idea of 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 143 federal police staff being actively engaged 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 engaged in environmental enforcement. Conversely, it is also true that not all staff within the federal police force who are engaged in environmental enforcement are included in this network. The figure of 143 people should therefore be regarded as indicative only.

It is more accurate to say that in 2010 49 FTEs within the federal police force were actively engaged in environmental enforcement in the Flemish Region. These included 12 FTEs within the Environment Division of the *Directorate of Crimes against Goods*<sup>49</sup>, 35 FTEs of research capacity within the federal judicial police and 2 FTEs of phenomenon coordinators.

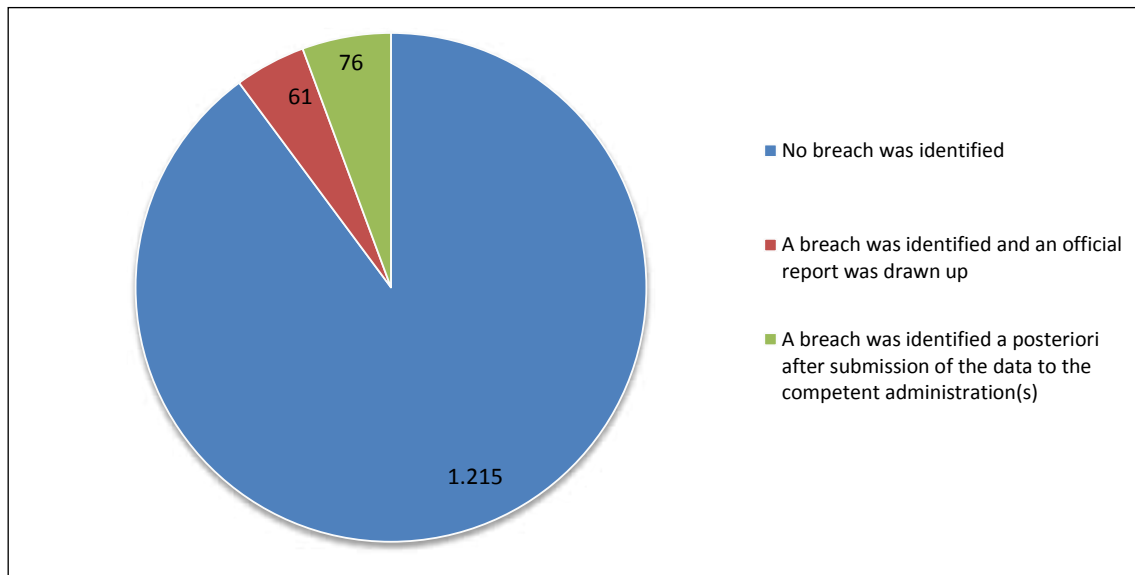
<sup>49</sup> Directie van de bestrijding van de criminaliteit tegen goederen (DJB).

In 2010, a total of 472 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 offences.

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 1,352 proactive inspections in 2010 in the framework of waste shipments on the territory of the Flemish Region. Within the federal police force it was decided to focus on waste which represented a serious threat to public health or the environment, and which generated huge (illegal) profits. These inspections of waste shipments are usually carried out in cooperation with local police forces.

During 137 of these inspections a breach was identified. The further result of these inspections is shown in the graph below.



Graph 7 Proactive inspections of waste shipments carried out by the federal police

In 2010, a total of 1,352 inspections of waste shipments were carried out. During almost 90% of the inspections no breach was identified and in 4.5% of the cases an official report was drawn up<sup>50</sup>. In 5.5% of the cases a breach was identified after contact with the competent administration(s). With this document it is possible to make part of the waste stream visible. Once the ECO form for waste has been drawn up, it is submitted to the Environment Division of the federal judicial police. This division checks the data. A number of data related to 'high-risk waste streams' are exchanged with the competent administrative services. Based on these additional administrative data it is still possible, a posteriori, to identify breaches which result in initial official reports. In concrete terms, it concerned 76 cases.

The aforementioned figures provide a picture which is similar to that of the Environmental Enforcement Report 2009. However, these data only referred to the period between 1 May 2009 and 31 December 2009. Still, if the figures are reduced to a period of 12 months, a total of 1,363 inspections would have been carried out. In 89% of these inspections no breach was identified, in 6% a breach was identified af-

<sup>50</sup> These are official reports that were drawn up when the ECO form was being completed. However, it is possible that several other official reports were drawn up afterwards, if breaches were identified after the information was checked by the administrations. The latter was included in the graph above as 'A breach was identified, but no immediate further action was taken'.

ter contact with the competent administration(s) and in 5% of the cases an official report was drawn up. The number of inspections of waste shipments and, therefore, the approach of the federal police remain unchanged.

In other words, the enforcement activities of the federal police – 1,352 inspections in the study period – clearly concentrated on inspections of waste shipments. This was also stipulated as such in the National Safety Plan 2008-2011, in which the Federal Government decided to consider serious environmental offences (concentrating on serious, organised cases of waste fraud) as a priority, and tackle these with projects via annual integrated action plans.

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

The general section on the police forces discusses the official reports that were drawn up by the local police and the federal police in 2010 with regard to a specific environmental topic. 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 also enforce environmental law, but not as supervisors under the Environmental Enforcement Act, as already discussed in Chapter 2.2.1.1. 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. For this Environmental Enforcement Report 2010 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 together with the evaluation of the local environmental enforcement policy pursued (2.4).

#### **Supervisors appointed within the local police**

Besides the appointment of a municipal supervisor among the municipality's own staff or by an intermunicipal association, it is possible, via a cooperation agreement, to appoint supervisors within the local police force to perform municipal environmental enforcement activities. The local police supervisors are, just like the local supervisors appointed within the municipality itself or within an intermunicipal association, 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 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 classi-

fied 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 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.

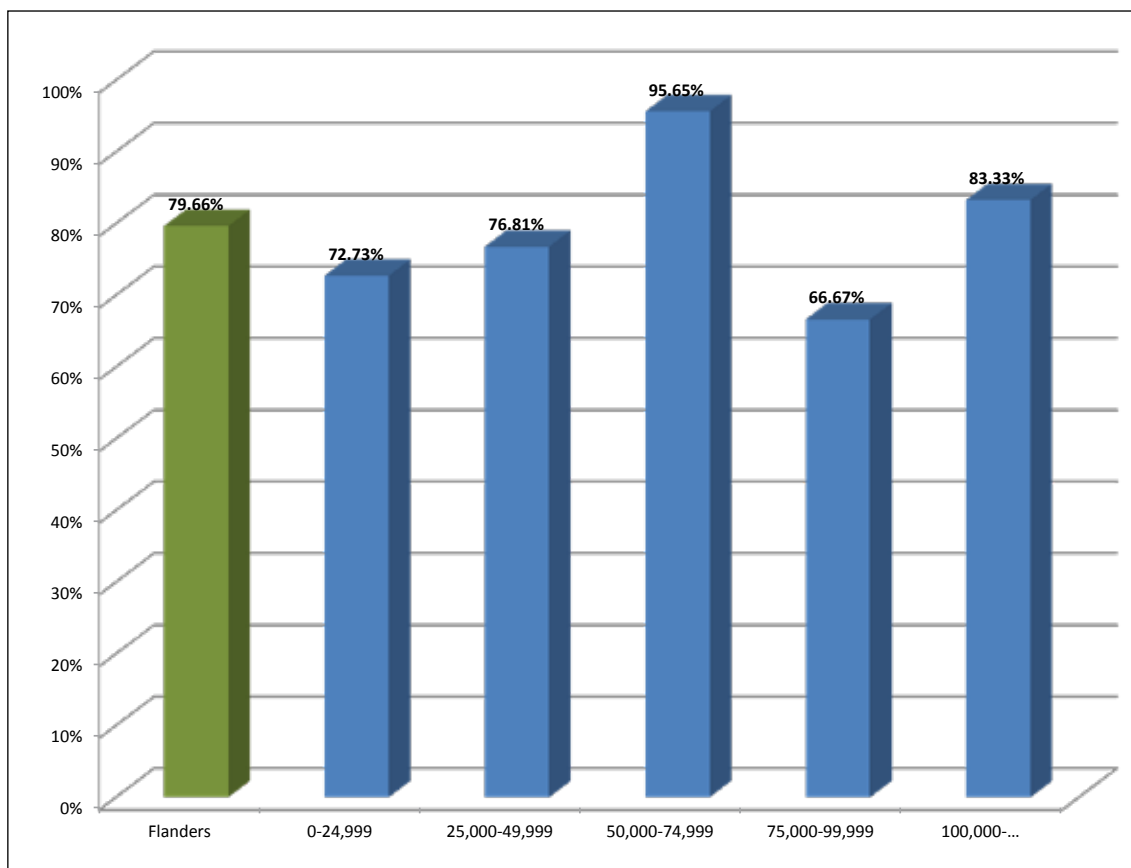
In this survey of police districts, similar to that conducted among the municipal supervisors, questions

were asked about the number of inhabitants in the police district, whether the police district has an appointed supervisor at its disposal, about the number of, the time dedicated by and the reporting of supervisors and the organisation of the supervision within the local police force, and of course about the number of inspections and identifications carried out, as well as the results of these inspections.

### Response from the local police concerning the request for input

The VHRM received input from 94 of the 118 police districts, which means a response of 79.66% for the Flemish Region. The graph and table below provide an overview of the response based on the number of inhabitants in the police district.

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



Graph 8 Response (%) from the local police to the survey (according to police district population)

	Number of police districts in the category in question	Number of responding police districts per category
Police districts with 0-24,999 inhabitants	11	8
Police districts with 25,000-49,999 inhabitants	69	53
Police districts with 50,000-74,999 inhabitants	23	22
Police districts with 75,000-99,999 inhabitants	9	6
Police districts with more than 100,000 inhabitants	6	5

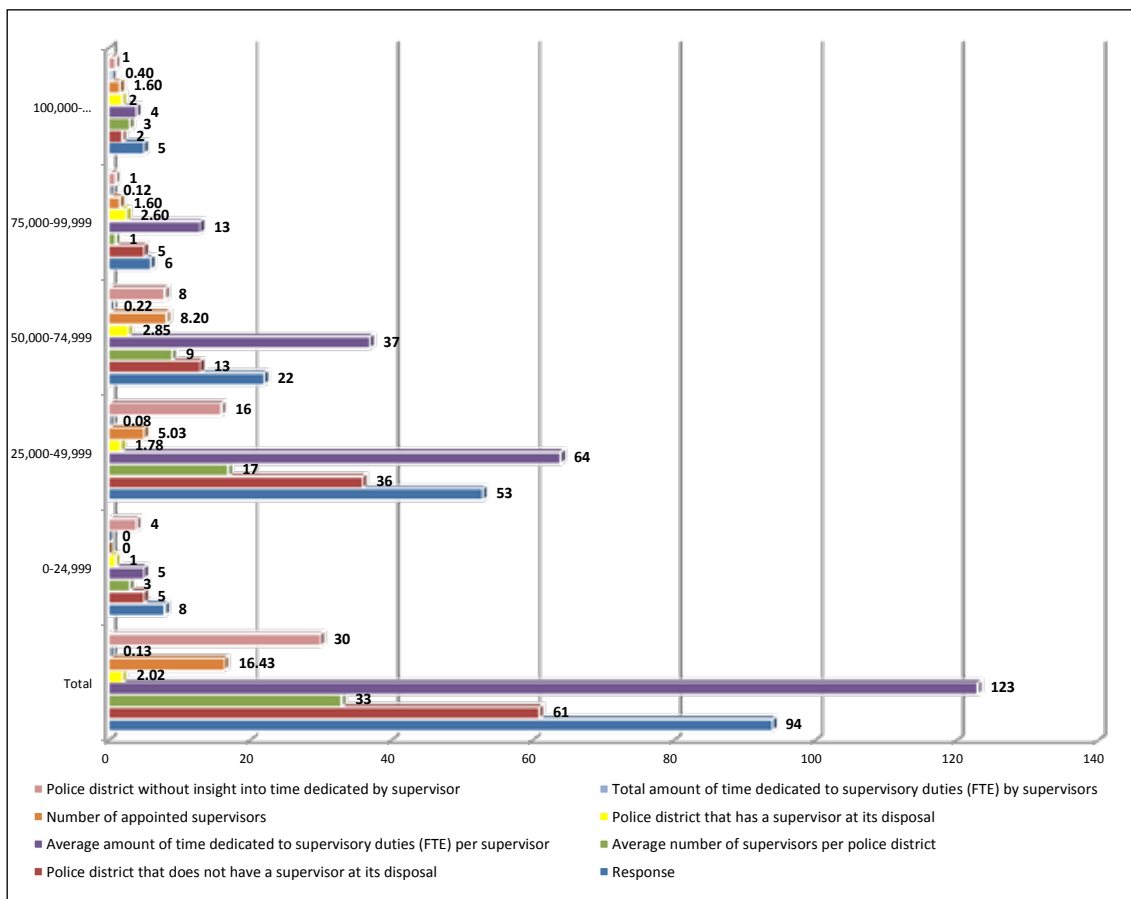
*Table 8 Categories of Flemish police districts, including number of police districts per category and number of respondents per category*

Based on the figures above, it can be concluded that a relevant number of police districts responded for all categories. It can thus be said that a conclusion can be drawn per category of police districts which applies to the average police district in the category in question. A small increase can be observed compared to the survey that was carried out within the framework of the Environmental Enforcement Report 2009. 77.12% of the police districts responded for the Environmental Enforcement Report 2009, whereas this amounts to 79.66% for the Environmental Enforcement Report 2010. The largest increase was recorded for the police districts with 50,000 to 74,999 inhabitants, namely from 69.57% to almost 96%. However, among the police districts with 25,000 to 49,999 and 75,000 to 99,999 inhabitants, a decrease could be recorded in the percentage of police districts that responded in these categories, namely from 78.26% to 76.81% and from 88.89% to 66.67% respectively.

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

#### Appointment of supervisors by the local police and time dedicated

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, i.e. on 1 May 2010. This can be either a municipal supervisor or Vlarem official, or a supervisor or Vlarem official of an intermunicipal association, or a supervisor or Vlarem official of a police district. Since the possibility exists to appoint supervisors within the police districts, all the police districts in the Flemish Region were asked whether a supervisor was appointed within their police district, how many supervisors were appointed and how much time these supervisors dedicated to environmental enforcement duties in 2010 within the framework of the Environmental Enforcement Act. These data are presented globally and by category in the following graph:



Graph 9 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	53	22	6	5	94
Police district that has a supervisor at its disposal	5	36	13	5	2	61
Police district that does not have a supervisor at its disposal	3	17	9	1	3	33
Number of appointed supervisors	5	64	37	13	4	123
Average number of supervisors per police district	1.00	1.78	2.85	2.60	2.00	2.02
Total amount of time dedicated to supervisory duties by supervisors (FTEs)	0.00	5.03	8.20	1.60	1.60	16.43
of which FTEs dedicated by the supervisor to environmental enforcement duties within the framework of the Environmental Enforcement Act	0.00	3.77	5.00	1.60	0.80	11.17
of which FTEs dedicated to administrative support of environmental enforcement duties	0.00	1.26	3.20	0.00	0.80	5.26
Average amount of time dedicated to supervisory duties per supervisor (in FTEs)	0.00	0.08	0.22	0.12	0.40	0.13
Police district that has no insight into the time dedicated per supervisor	4	16	8	1	1	30

*Table 9 Overview of efforts related to environmental enforcement duties by local police supervisors (according to police district population)*

It can be derived from the figures above that almost 65% of the responding police districts have appointed a supervisor within the police district. In total, 123 supervisors were appointed within the police districts in the Flemish Region, which is an average of 2.02 supervisors within the police districts that have a supervisor at their disposal. The total amount of time dedicated by these 123 supervisors amounted to only 16.43 FTEs in 2010, 11.17 FTEs of which were dedicated to environmental enforcement duties within the framework of the Environmental Enforcement Act and 5.26 FTEs of which were dedicated to administrative duties in support of environmental enforcement duties. This means that each supervisor dedicated an average of 0.13 FTEs to supervisory duties. However, this figure must be put into perspective, since 30 police districts indicated not having any insight into the amount of time dedicated by the appointed supervisor.

Compared to the data from the Environmental Enforcement Report 2009 it can be concluded that more police districts had one or more supervisors at their disposal, namely 41 in 2009 and 61 in 2010. In addition, the total number of appointed supervisors of a police district increased from 97 to 123. What is remarkable is the fact that the average amount of time each supervisor dedicated to supervisory duties declined in 2010. In the Environmental Enforcement Report 2009 the average amount of time each supervisor dedicated to supervisory duties was still 0.19 FTEs. In 2010, this was only 0.13. There were thus more police districts that had a supervisor at their disposal. In 2010, more supervisors were available within these police districts, but these supervisors dedicated less time to environmental enforcement duties

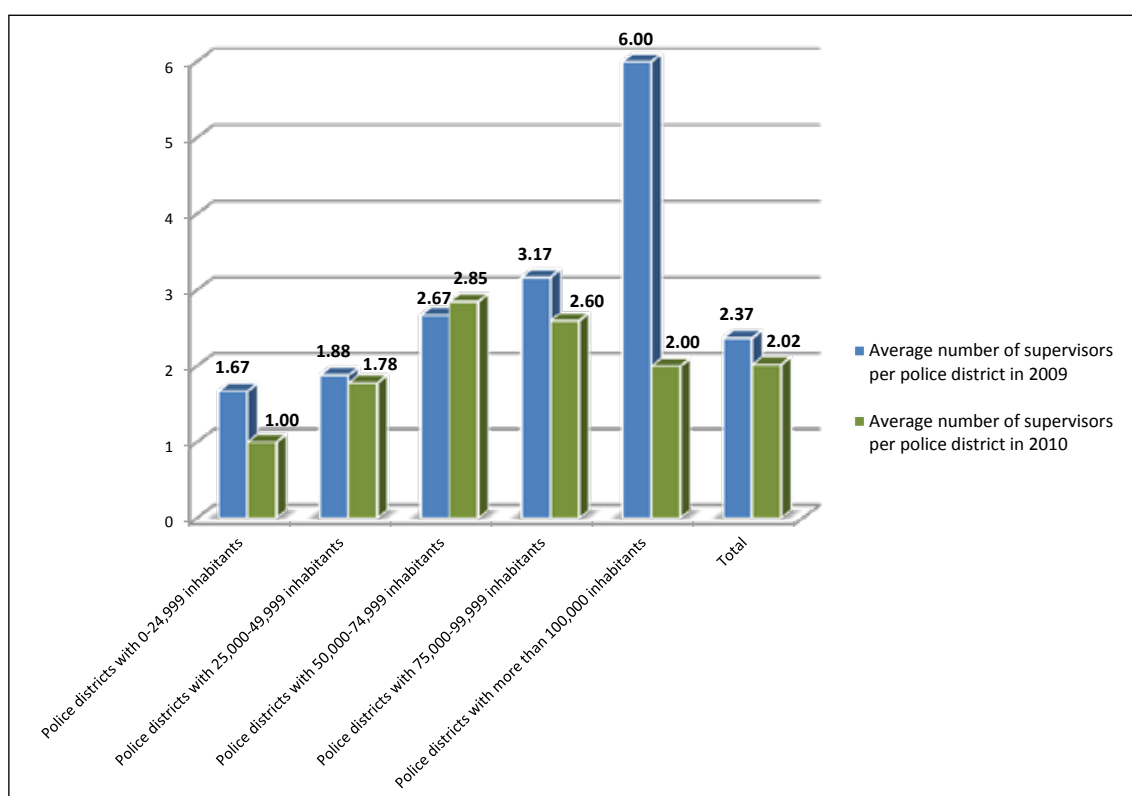
under the Environmental Enforcement Act. The fact that the supervisors appointed with the local police dedicated on average very little time to the actual performance of supervisory duties raises the question whether some of these supervisors were appointed only for appearance's sake, without actually focussing on environmental enforcement within the framework of the Environmental Enforcement Act.

This problem clearly occurs in police districts with a population of up to 24,999. 5 out of the 8 responding districts pointed out having 1 supervisor at their disposal. Four of these police districts did not have any insight into the amount of time dedicated by their supervisor, whereas 1 police district indicated that its supervisor dedicated 0 FTEs to environmental enforcement duties within the framework of the Environmental Enforcement Act in 2010. Out of the 53 responding police districts 36 indicated that they had a total of 64 supervisors at their disposal. This is no less than 1.78 supervisors per police district. Since a total of 5.03 FTEs was registered for 64 supervisors, the average number of FTEs per supervisor is barely 0.08 FTEs.

This problem is less evident, however, in police districts with a larger population. In the largest category with more than 100,000 inhabitants, for instance, each supervisor dedicated an average of 0.40 FTEs to supervisory duties.

It could be concluded from this that it would be more advisable for the municipalities not to have the supervision come under the police districts, when it concerns a rather small police district, since they dedicated fewer FTEs to supervisory duties. This may be explained by the idea of a scale increase and specialisation. It could be supposed that when a police district has more inhabitants, the police district itself is larger as well. This could mean that the officers within this force could specialise and the appointed supervisors could dedicate more time to environmental enforcement duties as specified in the Environmental Enforcement Act.

The graph and table below show the comparison of the average number of supervisors in 2009 and 2010.



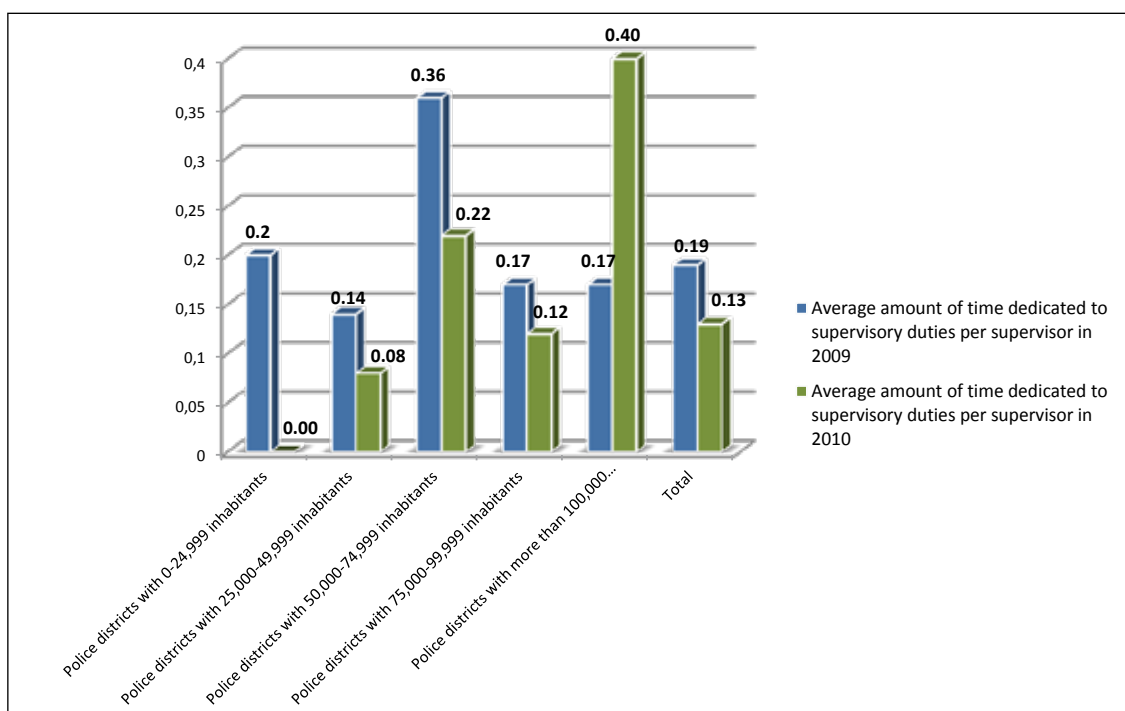
Graph 10 Comparison of the average number of supervisors per police district in 2009 and 2010

	Average number of supervisors per police district in 2009	Average number of supervisors per police district in 2010
Police districts with 0-24,999 inhabitants	1.67	1.00
Police districts with 25,000-49,999 inhabitants	1.88	1.78
Police districts with 50,000-74,999 inhabitants	2.67	2.85
Police districts with 75,000-99,999 inhabitants	3.17	2.60
Police districts with more than 100,000 inhabitants	6.00	2.00
Total	2.37	2.02

Table 10 Comparison of the average number of supervisors per police district in 2009 and 2010

The total number of appointed supervisors per police district rose from 97 to 123, and so did the number of police districts that had a supervisor at their disposal (from 41 to 61). As a result, the average number of supervisors per police district that had a supervisor at its disposal declined from 2.37 to 2.02. The most remarkable decrease is that of the police districts with a population of more than 100,000. Here, the average number of supervisors fell from 6 to 2. In the category of police districts with 50,000 to 74,999 inhabitants, the average number of supervisors per police district rose slightly.

However, it may be more relevant to compare the average amount of time each supervisor dedicated to supervisory duties in 2009 and 2010, instead of the average number of supervisors. These data are graphically presented in the table below.



Graph 11 Comparison of the average amount of time each supervisor dedicated to supervisory duties in 2009 and 2010

	Average amount of time each supervisor dedicated to supervisory duties in 2009	Average amount of time each supervisor dedicated to supervisory duties in 2010
Police districts with 0-24,999 inhabitants	0.20	0.00
Police districts with 25,000-49,999 inhabitants	0.14	0.08
Police districts with 50,000-74,999 inhabitants	0.36	0.22
Police districts with 75,000-99,999 inhabitants	0.17	0.12
Police districts with more than 100,000 inhabitants	0.17	0.40
Total	0.19	0.13

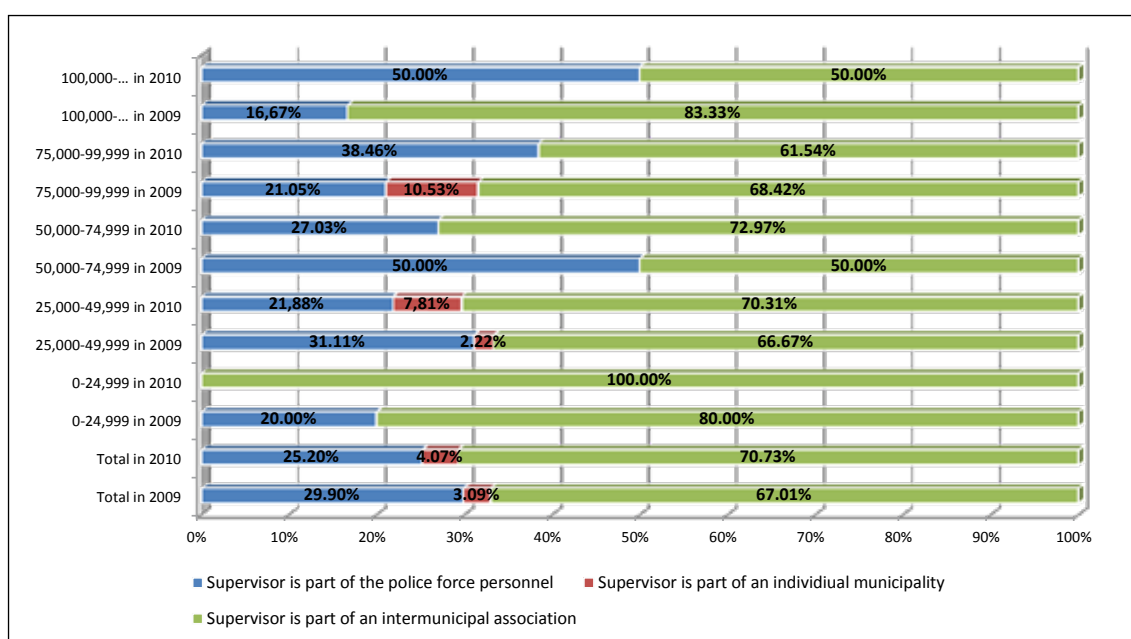
*Table 11 Comparison of the average amount of time each supervisor dedicated to supervisory duties in 2009 and 2010*

Despite the fact that more police districts have one or more supervisors at their disposal and that in 2010 more supervisors were appointed in total within the police districts, not only the total number of available supervisors per district declined, but also the average amount of time which each supervisor dedicated to environmental enforcement duties decreased from 0.19 to 0.13 FTEs. Such a decrease can be described as remarkable. The question can therefore be raised as to whether these supervisors are appointed for appearance's sake, only to ensure that the municipality complies with the provisions of the Environmental Enforcement Act.

This decrease reveals itself in the different categories, with the exception of the category of police districts with more than 100,000 inhabitants. The average amount of time each supervisor dedicates to environmental enforcement duties rose sharply in 2010, namely from 0.17 FTEs to 0.40 FTEs. Graph 9 and table 8 showed that the average number of supervisors per police district in this category had strongly decreased, however, namely from 6 to 2. This thus means that more time is dedicated to environmental enforcement duties with a smaller number of appointed supervisors. It may be assumed that the aforementioned process of increased scale and specialisation could be applied to the positioning of enforcement duties within the police districts by the municipalities.

#### Organisation of supervision within the local police forces

Apart from a more detailed survey about the organisation of supervision and environmental enforcement duties within the police district itself, such as the number of appointed supervisors within the district and the number of FTEs dedicated to enforcement duties, the survey of the local police inquired about how the supervision was organised within the municipalities. Besides the fact whether the police district itself had a supervisor within the force, it was asked whether supervisors were also appointed within the municipalities who belonged to the police district and/or whether a supervisor was appointed within an inter-municipal association. This provides an overall picture of how local supervision is organised. The acquired data are presented in the graph and table below and are - in terms of percentage - compared with the data from the Environmental Enforcement Report 2009. A similar exercise was completed when surveying the municipalities and can be found in Chapter 2.4.3.2. This makes it possible to provide an accurate picture of how environmental enforcement is organised at the local level, despite the fact that these figures are not absolute and must be put into perspective. The reason for this is that the Flemish High Council of Environmental Enforcement did not receive a complete response from the municipalities or the police districts. Therefore, there is a real risk of double counting.



Graph 12 Organisation of supervision within local police districts (according to police district population) in 2009 and 2010

		0-24,999	25,000-49,999	50,000-74,999	75,000-99,999	100,000-...	Total
Supervisor is part of police staff	2009	20.00%	31.11%	50.00%	21.05%	16.67%	29.90%
	2010	0.00%	21.88%	27.03%	38.46%	50.00%	25.20%
Supervisor is part of an intermunicipal association	2009	0.00%	2.22%	0.00%	10.53%	0.00%	3.09%
	2010	0.00%	7.81%	0.00%	0.00%	0.00%	4.07%
Supervisor is part of an individual municipality	2009	80.00%	66.67%	50.00%	68.42%	83.33%	67.01%
	2010	100.00%	70.31%	72.97%	61.54%	50.00%	70.73%

Table 12 Organisation of supervision within local police districts (according to police district population) in 2009 and 2010

In 2009, the majority of local supervisors were appointed within individual municipalities, namely 67.01%. This share further increased in 2010 to 70.73% of the supervisors. An increase of almost 1% can also be observed in the appointment of supervisors within intermunicipal associations. In 2010, only 1/4 of the local supervisors belonged to a police force, in contrast to almost 30% in 2009. It may be concluded from this that more municipalities opt to appoint a supervisor within their own personnel or within an intermunicipal association, instead of organising the local supervision via the police district.

A striking element is that in police districts with a smaller population (categories 0-24,999, 24,000-49,999 and 50,000-74,999 inhabitants) the appointment of a supervisor which belongs to the police force's own personnel declined in 2010, whereas this increased in police districts with a larger population (categories 75,000-99,999 and >100,000 inhabitants). It can therefore be stated that municipalities which belong to a

fairly large police district opt - possibly in addition to the appointment of a supervisor within the municipalities' own personnel - to appoint a supervisor within the police force, whereas municipalities belonging to a smaller police district refrain from doing so. As shown from the figures above the supervisors in the two smallest categories of districts dedicated on average also less time (FTE) to environmental enforcement duties per supervisor. This could have been the reason why the municipalities have chosen to organise environmental enforcement within their own administration or within an intermunicipal association instead of within the police district.

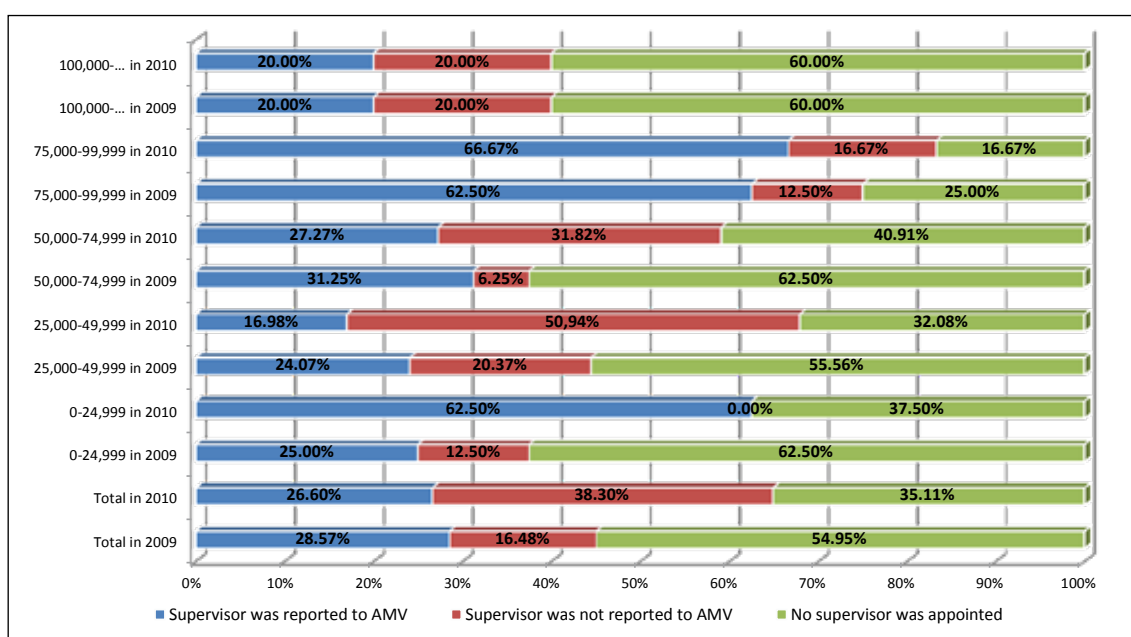
#### Reporting of supervisors within the police district to the Environmental Licences Division (AMV)

For the 61 police districts that had an appointed supervisor at their disposal, the survey also asked about whether this supervisor had been reported to the Environmental Licences Division (Afdeling Milieuvogunningen/AMV) of the Department of Environment, Nature and Energy.

For non-regional supervisors, i.e. provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and police district supervisors, the coming into force of the Environmental Enforcement Act and its implementing orders means that:

- ▶ provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and police district supervisors are required to have a Certificate of Competence (Article 13 of the Flemish Government Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy);
- ▶ in order to obtain the Certificate of Competence, supervisors must take training as referred to in Article 13, second subparagraph, of the above-mentioned implementing order. However, the Minister may, based on demonstrated training or experience and following a request from the person in question stating reasons, grant a partial or complete exemption from theoretical and practical training. This exemption also refers to parts of the Competence Test for which an exemption from training has been granted. The training leading to a Certificate of Competence consists of:
  - ▶ theoretical training;
  - ▶ practical training;
  - ▶ a Competence Test about the theoretical and practical training.
- ▶ the training, as mentioned in Article 13, second subparagraph, may only be given by institutions that have been recognised for this by the Minister, after advice, stating reasons, from the Environmental Licences Division of the LNE Department (Article 14 of the implementing order;)
- ▶ in accordance with Article 15 of the Flemish Government Decree of 12 December 2008, the institution shall deliver a certificate to students who have attended the training mentioned in Article 13, second subparagraph, of this implementing order, and who have passed the Competence Test. This certificate must be presented to the Environmental Licences Division together with any granted exemptions from training and the appointment decision of the body mentioned in Article 16.3.1, §1, 2°, 3°, 4° and 5° of the Environmental Enforcement Act. Based on these documents, the Environmental Licences Division will then deliver a Certificate of Competence and proof of identity.

The table below gives an overview of the extent to which the police district supervisors were reported to the Environmental Licences Division of the Department of Environment, Nature and Energy, in comparison to the data from the Environmental Enforcement Report 2009.



Graph 13 Appointment and reporting of supervisor(s) to AMV by police district (according to police district population) in 2009 and 2010

		0-24,999	25,000-49,999	50,000-74,999	75,000-99,999	100,000-...	Total
Police districts where supervisor was reported to AMV	2009	25.00%	24.07%	31.25%	62.50%	20.00%	28.57%
	2010	62.50%	16.98%	27.27%	66.67%	20.00%	26.60%
Police districts where supervisor was not reported to AMV	2009	12.50%	20.37%	6.25%	12.50%	20.00%	16.48%
	2010	0.00%	50.94%	31.82%	16.67%	20.00%	38.30%
Police districts where no supervisor was appointed	2009	62.50%	55.56%	62.50%	25.00%	60.00%	54.95%
	2010	37.50%	32.08%	40.91%	16.67%	60.00%	35.11%

Table 13 Appointment and reporting of supervisor(s) to AMV by police district (according to police district population) in 2009 and 2010

A striking element is the fact that, in terms of percentage, fewer police districts reported their supervisor(s) to the Environmental Licences Division of the Department of Environment, Nature and Energy in 2010 than in 2009. Only 25 of the 94 responding police districts indicated that their supervisor was reported to the Environmental Licences Division, whereas 36 police districts had not (yet) reported their supervisor. This phenomenon can partially be explained by the fact that the number of police districts that have a supervisor at their disposal increased in 2010 (cf decrease in terms of percentage of almost 20 percentage points in the police districts where no supervisor was appointed) and that these supervisors have probably not yet been reported to the Environmental Licences Division. This may explain both the decreasing number of police districts where the supervisor was reported to the Environmental Licences Division and the rising number of police districts where supervisors were not reported to the Environmental Licences Division.

When looking specifically at the different categories of police districts (according to police district population), a number of other potentially decisive factors can be pointed out.

In the category of police districts with 0 to 24,999 inhabitants a sharp rise can be observed in the number of police districts that have reported their supervisor to the Environmental Licences Division. In fact, 100% of the supervisors in this category were reported. This large increase can thus be explained by the fact that all police districts reported their supervisor in 2010. However, at the same time the number of police districts that have a supervisor at their disposal has grown as well.

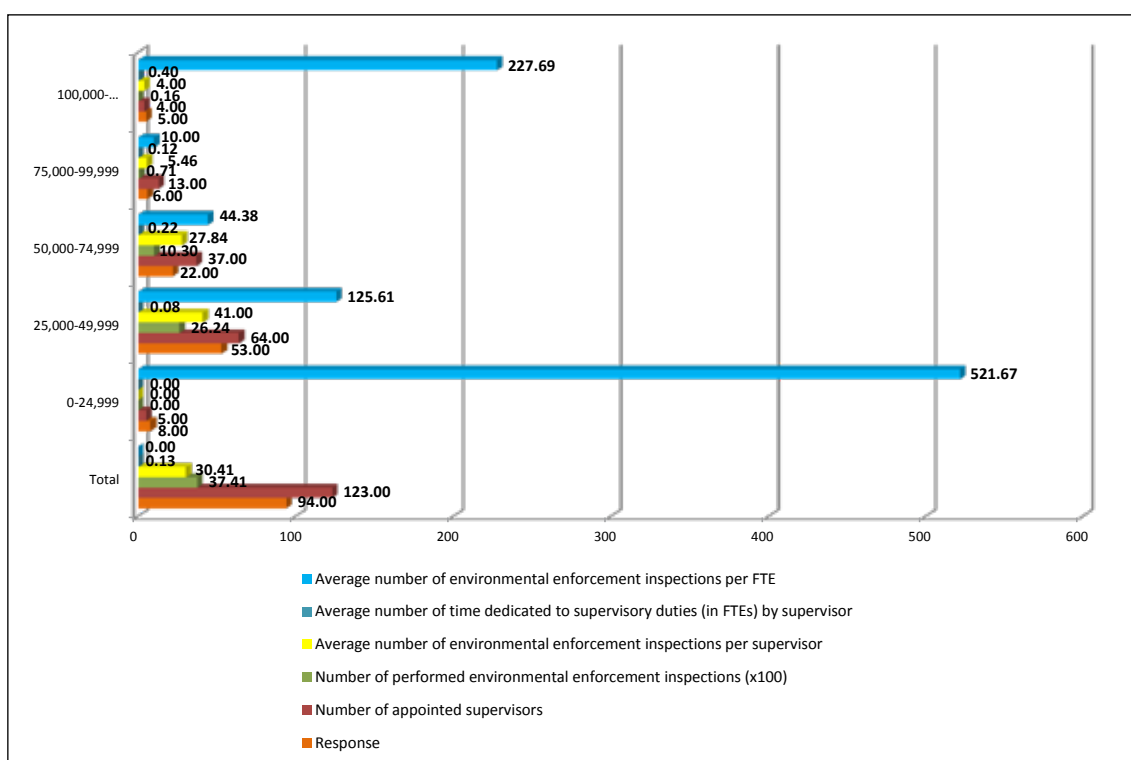
In the categories of police districts with 25,000 to 49,999 and 50,000 to 74,999 inhabitants the number of police districts that reported their supervisors has declined, and the number of districts that did not report their supervisors has increased substantially. The fact that this difference is not proportional is owing to the great increase in the number of police districts that have a supervisor at their disposal in both categories in 2010 (cf Table 7). These police districts thus still have to report their supervisors to the Environmental Licences Division.

The differences in the category of police districts with 75,000 to 99,999 inhabitants can mainly be explained by the lower response in 2010 than in 2009.

#### Environmental enforcement inspections carried out by local police supervisors

In order to gain an insight into the activities of the supervisors appointed within the local police forces, 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. The survey explicitly inquired after the number of environmental enforcement inspections that were carried out within the framework of the Environmental Enforcement Act by this/these supervisor(s) of the police district between 1 January 2010 and 31 December 2010. The term 'inspection' was defined as: *'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' and 'inspections of documents'.*





Graph 14 Efforts related to environmental enforcement duties by local police supervisors (according to police district population)

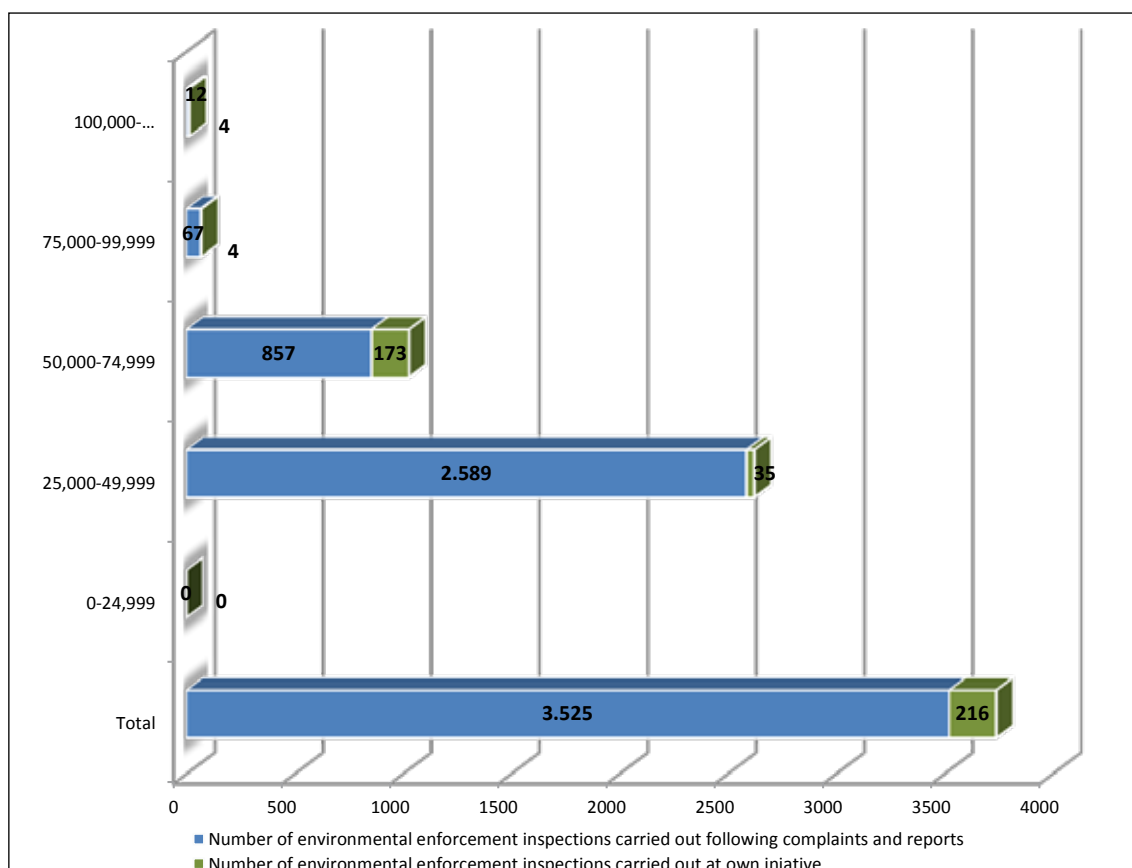
	Response	Number of appointed supervisors	Number of environmental enforcement inspections carried out	Average number of environmental enforcement inspections per supervisor	Average amount of time dedicated to supervisory duties by supervisors (in FTEs)	Average number of environmental enforcement inspections per FTE
0-24,999	8	5	0	0.00	0.00	0.00
25,000-49,999	53	64	2,624	41.00	0.08	521.67
50,000-74,999	22	37	1,030	27.84	0.22	125.61
75,000-99,999	6	13	71	5.00	0.12	44.38
100,000-...	5	4	16	4.00	0.40	10.00
Total	94	123	3,741	30.41	0.13	227.69

Table 14 Efforts related to environmental enforcement duties by local police supervisors (according to police district population)

These figures indicate that in 2010 a total of 3,741 environmental enforcement inspections were carried out within the framework of the Environmental Enforcement Act by a total of 123 local police supervisors. This comes down to 30.41 inspections per supervisor who dedicates an average of 0.13 FTEs to supervisory duties. This figure can be generally regarded as promising. Despite the fact that the local police supervisors dedicate only little time to environmental enforcement duties, they carry out a large number of inspections within the framework of the Environmental Enforcement Act.

Still, this figure needs to be put into perspective. When looking at the environmental enforcement inspections carried out by local police supervisors per category of police districts, we notice a strongly distorted picture. For instance, the largest category (police district with a population of more than 100,000) reported an average of only 4 environmental enforcement inspections per supervisor, but an average amount of time dedicated per supervisor of 0.40 FTEs. In the police districts of the category 75,000 to 99,999 inhabitants, the average number of environmental enforcement inspections per supervisor also amounts to 5 and the average amount of time dedicated to supervisory duties per supervisor is 0.12 FTEs. The category of police districts with 25,000 to 49,999 inhabitants and the category of police districts with 50,000 to 74,000 inhabitants on the other hand show a completely different picture, of respectively 41 inspections per supervisor who dedicates 0.08 FTEs to supervisory duties, and nearly 28 inspections per supervisor who dedicates 0.22 FTEs on supervisory duties. On the basis of these figures it could be concluded that these last two police districts carry out a huge amount of inspections with the smallest possible effort. However, the figures above should to some extent be regarded as unexpected, which makes the Flemish High Council of Environmental Enforcement fear that there is still a problem with the application of the correct terminology on the one hand, and the possibly incorrect monitoring and reporting (within the framework of the Environmental Enforcement Act) on the other hand.

With regard to the 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 acquired data are graphically presented in the table and graph below.



**Graph 15** Number of environmental enforcement inspections carried out by local police supervisors (according to police district population) within the framework of the Environmental Enforcement Act

	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
0-24,999	0	0	0
25,000-49,999	2,624	2,589 <sup>51</sup>	35
50,000-74,999	1,030	857	173
75,000-99,999	71	57	4
100,000-...	16	12	4
Total	3,741	3,525 <sup>52</sup>	216

*Table 15* Number of environmental enforcement inspections carried out by local police supervisors (according to police district population) within the framework of the Environmental Enforcement Act

The graph and table above clearly show that the local police supervisors mainly focus on environmental enforcement inspections following complaints and reports (reactive) and less on environmental enforcement inspections carried out at own initiative (proactive). In relation to the total number of inspections the ratio is indeed respectively 94.23% compared to 5.77%.

This ratio is not as explicit in every category. In the largest category of police districts with a population of more than 100,000, it can first of all be noted that the number of inspections carried out, namely 16, by the supervisors is relatively low, given the fact that the average number of supervisors per police district amounted to 2 and the average amount of time each supervisor dedicates to supervisory duties was 0.17 FTEs. This comes down to 4 inspections per year per supervisor who dedicates 0.17 FTEs of his time to enforcement duties. However, the table above does show that 1/4 of these inspections took place at own initiative.

The proportions in the category of police districts with 50,000 to 74,999 inhabitants are also different from the overall picture. In 2010, these police districts carried out a total of 1,030 inspections with 37 supervisors. This is almost 30 inspections per supervisor who dedicates 0.36 FTEs of his time to environmental enforcement duties each year. Almost 17% of these inspections were environmental enforcement inspections carried out at own initiative.

Yet, the overall picture shows that the local police supervisors have mainly focused on the supervision following complaints and reports. This may be explained by the fact that the local police are responsible for first line assistance and the first line processing of complaints.

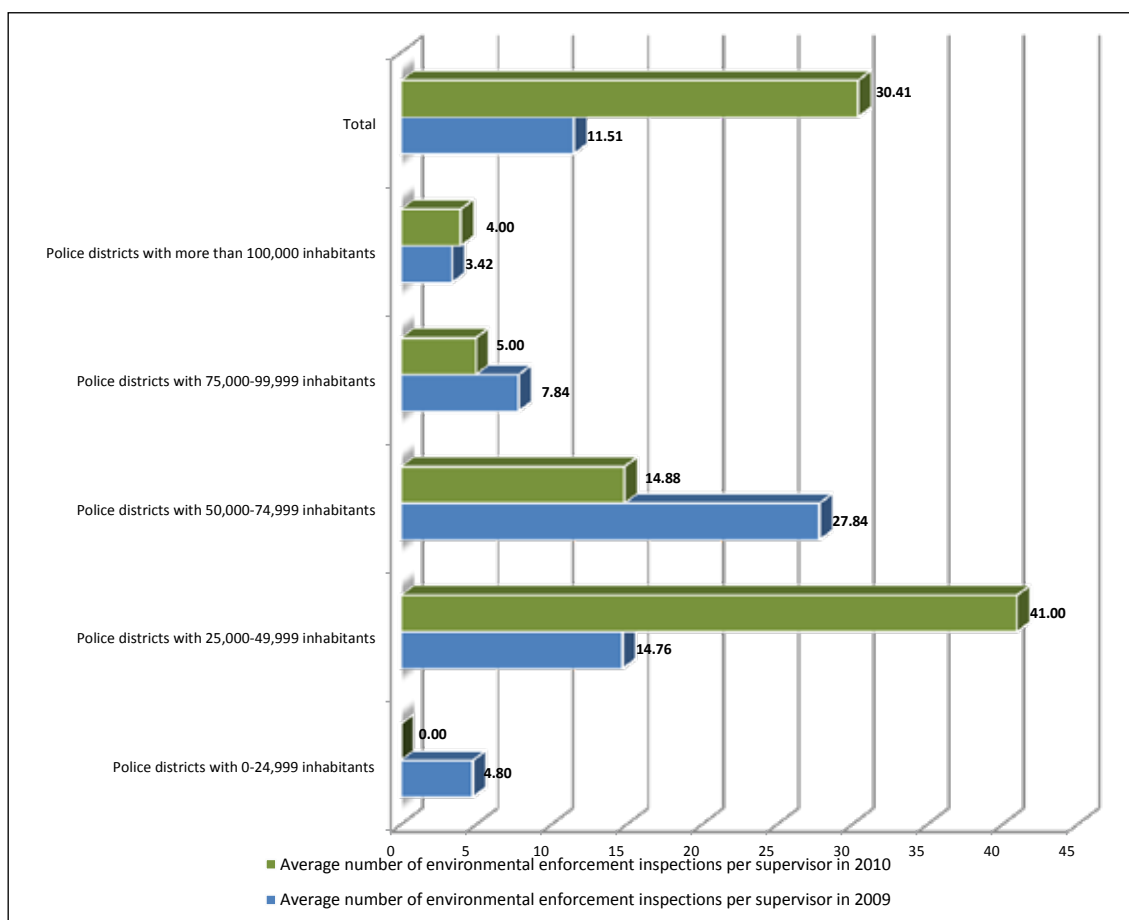
The graph and table below make a comparison between the average number of inspections per supervisor in 2009 and 2010.

51 1,710 inspections carried out by 1 police district with 2 supervisors.

52 2 police districts indicated that the police district supervisors carried out all inspections and identifications as judicial police officers and not as supervisors. However, the Environmental Enforcement Report 2010 only reports on those inspections that were carried out by local police supervisors within the framework of the Environmental Enforcement Act. This was stipulated explicitly in the questionnaire.

	Average number of environmental enforcement inspections per supervisor in 2009	Average number of environmental enforcement inspections per supervisor in 2010
Police districts with 0-24,999 inhabitants	4.80	0.00
Police districts with 25,000-49,999 inhabitants	14.76	41.00
Police districts with 50,000-74,999 inhabitants	14.88	27.84
Police districts with 75,000-99,999 inhabitants	7.84	5.00
Police districts with more than 100,000 inhabitants	3.42	4.00
Total	11.51	30.41

**Table 16** Average number of environmental enforcement inspections per supervisor in 2009 and 2010



**Graph 16** Average number of environmental enforcement inspections per supervisor in 2009 and 2010

However, the figures above cannot be compared just like that. The 2009 figures refer to the number of inspections carried out from 1 May 2009 to 31 December 2009, whereas the data for 2010 refer to a

complete calendar year. In order to make a comparison possible, the data should be reduced to the average number of inspections per supervisor per month. In 2009, this amounted to a total average of 1.44 inspections per supervisor per month, whereas in 2010 this number had increased to an average of 2.53 inspections per supervisor per month.

The largest increase is visible in the police district categories with 25,000 to 49,999 and 50,000 to 74,999 inhabitants, namely respectively from an average of 1.85 inspections per supervisor per month to an average of 3.42 inspections per supervisor per month, and from an average of 1.86 inspections per supervisor per month to an average of 2.32 inspections per supervisor per month. This progress can be regarded as very positive, since both categories had fewer FTEs at their disposal in 2010 to perform their supervisory duties. For the police district category with 25,000 to 49,999 inhabitants the average amount of time each supervisor dedicated to supervisory duties decreased from 0.14 FTEs in 2009 to 0.08 FTEs in 2010. For the police district category with 75,000 – 99,999 inhabitants the average amount of time each supervisor dedicated to supervisory duties fell from 0.36 FTEs in 2009 to 0.12 FTEs in 2010. These police districts thus perform more inspections per supervisor, while this supervisor can dedicate less time to supervisory duties.

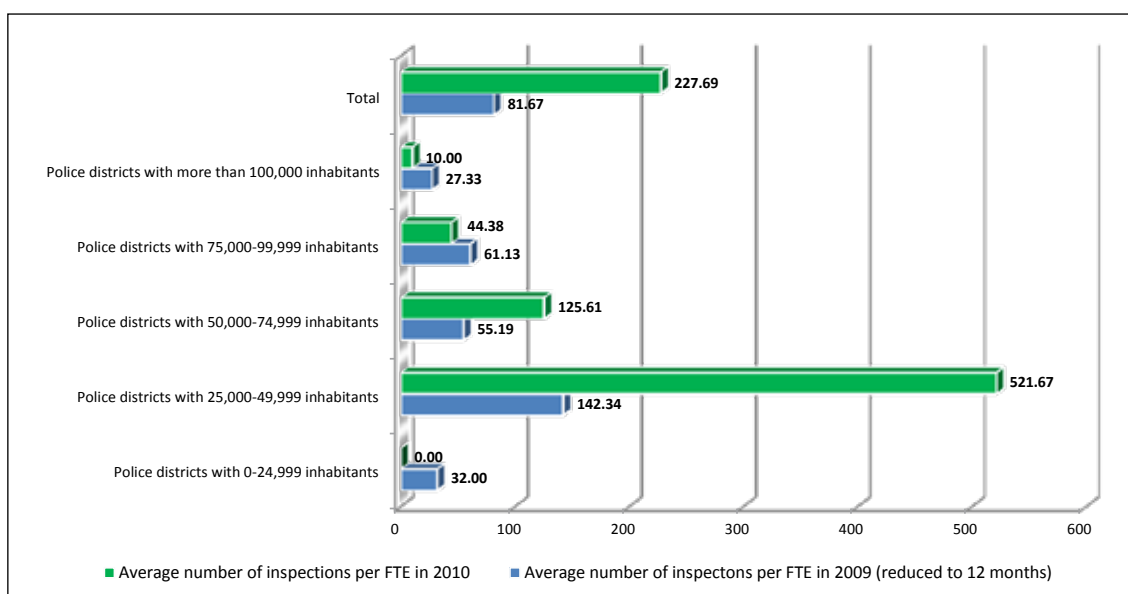
The other categories do not really contribute to the increase of the overall figure. On the contrary, in the smallest and the two largest categories the average number of inspections per supervisor per month declined. In 2010, the smallest police districts did not carry out any inspections, whereas in 2009 the inspections per supervisor per month still amounted to 0.6 on average. In the category of police districts with 75,000 to 99,999 inhabitants, the average number of inspections per supervisor per month even decreased by more than half from 1 to 0.42 inspections. This figure also declined from 0.43 to 0.33 inspections for the largest category. Especially this latter figure is remarkable, since the average amount of time each supervisor dedicated to supervisory duties in 2010 rose to 0.40 FTEs, while this was only 0.17 in 2009. It can therefore be stated for this category that fewer inspections were performed with a larger number of available FTEs. This is in contrast to the smaller categories (25,000 to 49,999 and 50,000 to 74,999 inhabitants) which carried out more inspections in 2010 in a smaller amount of time (FTEs).

It can thus be established that there is a great difference in the way in which police districts carry out their environmental enforcement duties. Some police districts build a certain expertise and make some progress and can carry out more inspections in a smaller amount of time available. This trend cannot be observed within other police districts. Quite on the contrary. Especially the larger police districts should be expected to benefit from the increased scale and building of expertise. Yet, the figures above indicate that they do not make any use of this.

Another possible angle for considering the efforts of the local police supervisors and for comparing them to those of 2009 is 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.

	Average number of inspections per FTE in 2009	Average number of inspections per FTE in 2009 (reduced to 12 months)	Average number of inspections per FTE in 2010
Police districts with 0-24,999 inhabitants	24.00	32.00	0.00
Police districts with 25,000-49,999 inhabitants	106.75	142.34	521.67
Police districts with 50,000-74,999 inhabitants	41.39	55.19	125.61
Police districts with 75,000-99,999 inhabitants	45.85	61.13	44.38
Police districts with more than 100,000 inhabitants	20.50	27.33	10.00
Total	61.25	81.67	227.69

Table 17 Average number of environmental enforcement inspections per FTE in 2009 and 2010



Graph 17 Average number of environmental enforcement inspections per FTE in 2009 and 2010

Since the 2009 data refer to the period from 1 May 2009 through 31 December 2009 the figures were extrapolated to an entire calendar year. Both for 2009 and 2010, the average number of inspections per FTE is considerably higher than the average number of inspections per supervisor. This is due to the fact that the average amount of time each local police supervisor dedicated in 2009 was not higher than 0.40 FTEs and amounted to an average of only 0.13 FTEs, in 2010 this was respectively 0.36 FTEs and 0.19 FTEs. Therefore the figures above must be interpreted as such.

In general, it can be stated that the number of inspections per FTE in 2010 has risen compared to 2009, namely from an average of 81.67 inspections per FTE to an average of 227.69 inspections per FTE. Still, this generally positive picture is mainly thanks to the sharp increase in the police districts with 25,000 to 49,999 inhabitants. There was also a substantial increase in the police districts with 50,000 to 74,999 inhabitants, whereas the other categories of police districts revealed a decline in the average number of inspections per FTE.

## **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 were 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 the prevention and management of waste;
- ▶ 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 environmental licences.

In the tables below an overview is given of the requests/petitions which the governors received in relation to the imposition of administrative measures as well as the number of administrative measures that were actually imposed following these requests/petitions.

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 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 table below indicates per province how many requests/petitions the provincial governor concerned received between 1 January 2010 and 31 December 2010, and who submitted these requests (regional supervisor, municipal supervisor, supervisor of an intermunicipal association, police district supervisor, provincial supervisor) or petition (third parties).

2.3.1.1 Administrative measures

Administrative measures		Provincial governor				
		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 2010 and 31 December 2010:	1	1	2	0	0
	Requests made by regional supervisors:	0	0	0	0	0
	Requests made by municipal supervisors:	0	0	0	0	0
	Requests made by supervisors of an intermunicipal association:	0	0	0	0	0
	Requests made by police district supervisors:	0	0	0	0	0
	Requests made by provincial supervisors:	0	0	0	0	0
	Petitions filed by third parties:	1	1	2	0	0

*Table 18 Requests/petitions for the imposition of administrative measures received by the governors of the Flemish provinces in 2010*

The table above shows that the provincial governor received only a very limited number of petitions to impose administrative measures, and not any requests at all from supervisors. The provincial governors of Limburg and Flemish Brabant each received only 1 petition in 2010, whereas the Antwerp governor received two petitions. The instrument 'requests/petitions for the imposition of administrative measures' addressed to the provincial governor is thus not frequently used. 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.

Compared to 2009, when the provincial governor of Antwerp received 1 and the provincial governor of East Flanders 2 requests/petitions for the imposition of administrative measures, it can be concluded that the number of requests/petitions to the provincial governors for the imposition of administrative measures has slightly increased.

The table below gives an overview of the outcome of these requests/petitions for the imposition of administrative measures.



Administrative measures		Governor of the province				
		<i>Limburg</i>	<i>Flemish Brabant</i>	<i>Antwerp</i>	<i>East Flanders</i>	<i>West Flanders</i>
Administrative measures imposed by the provincial governor	Administrative measures imposed by the provincial governor in 2010	0	0	1	0	0
	Prohibition order <sup>53</sup> :	0	0	0	0	0
	Regularisation order <sup>54</sup> :	0	0	1	0	0
	Administrative enforcement <sup>55</sup> :	0	0	0	0	0
	A combination of the above-mentioned administrative measures:	0	0	0	0	0
	It was not possible to have the measure carried out within the imposed term:	0	0	0	0	0

Table 19 Administrative measures imposed by the governors of the Flemish provinces in 2010

Despite the fact that 4 petitions for the imposition of administrative measures were filed with the provincial governors, only 1 administrative measure was imposed. In 2010, the provincial governor of Antwerp imposed a prohibition order. He could do this at his own initiative or in response to the petition filed by a third party for the imposition of an administrative measure. By way of comparison it can be mentioned that the provincial governors did not impose any administrative measures at all in 2009.

Although it is impossible to find out the reason why no 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 personnel, support 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. However, in each province the governors could currently call in the services of the Environmental Inspectorate Division to assist them in these duties.

Despite the fact that for the moment no definitive conclusions can be drawn yet with regard to the division of competences in the Environmental Enforcement Act, it can still be carefully concluded that the imposition of administrative measures by provincial governors, and the requests/petitions filed to that end, does not produce any great results.

### 2.3.1.2 Safety measures

None of the provincial governors received a request for the imposition of safety measures. It should also be mentioned that none of the provincial governors themselves took the initiative to impose safety measures. In this context as well, governors can turn to the Environmental Inspectorate Division for expert assistance if necessary.

53 This is an order from the authorised supervisor to the suspected offender to end certain activities, works, or the use of objects.

54 This is an order from the authorised supervisor to the suspected offender to take the necessary measures to end the environmental infringement or environmental offence, to reverse its consequences, or prevent its repetition.

55 In this case the authorised supervisor takes actual action against the identified environmental infringement or environmental offence.

For the sake of completeness, it must be mentioned that the Flemish High Council of Environmental Enforcement did not receive any response from the provincial governor of East 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 Provincial Executives of the five Flemish provinces, through the member of the Provincial Executive in charge of Environment, about the appointment of these supervisors and the efforts with respect 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 appurtenances thereto;
- ▶ Article 12 of the Flemish Parliament Act of 2 July 1981 on the prevention and management of waste, Category 2 and 3 unnavigable watercourses and appurtenances thereto.

It can be concluded from the received data that none of the provinces had a supervisor at its disposal in 2010 (see table 17), as referred to in Article 16.3.1, §1, 2° of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy, appointed by the Provincial Executive or a Vlare official. However, in the 2010 programme of the Flemish provinces, as included in the appendix to the Environmental Enforcement Programme 2010 of the Flemish High Council of Environmental Enforcement, it was already stated that the Flemish provinces would make an effort in 2010 to clarify the concrete duties, in consultation with other managers of watercourses, as there is still some confusion and uncertainty about the concrete supervisory duties of the provincial supervisors. Another intention for 2010 was to look for clarity on the obligation to provide training to the provincial supervisors, as the amount of training reportedly is not in proportion to the possible duties to be performed.

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 the provincial supervisors do not need to attend the theoretical and practical training with regard to noise nuisance and air pollution and do not have to take the related competence tests. As a result, the training was tailored to the competences of the provincial supervisors. Still, it can be established that, more than 2.5 years after the Flemish Parliament Act has entered into effect, the provinces still do not have any provincial supervisors at their disposal.

Province	Did the province have a supervisor at its disposal in 2010 <sup>56</sup> – appointed by the Provincial Executive or a Vlaem official?	Did the province have a provincial member of staff at its disposal in 2010 who was appointed to inspect unnavigable watercourses <sup>57</sup> ?
Limburg	0	7
Antwerp	0	7
Flemish Brabant	0	0
East Flanders	0	2
West Flanders	0	4

Table 20 *Appointed provincial supervisors and appointed provincial personnel in 2010*

### Efforts related to environmental enforcement duties

The problem arising here – as a result of the failure to appoint provincial supervisors and the fact that no inspections were carried out – is that no enforcement by the provincial supervisors took place with respect to the legislation in the framework of Title XVI of DABM, for which they are competent. The Environmental Inspectorate Division was also assigned supervisory duties under this legislation, but does not consider infringements in the open countryside<sup>58</sup> a priority.

However, it should be noted that the provinces, in view of their responsibility as watercourse managers, have been performing supervisory duties for years with respect to legislation which was not included in Title XVI of the Environmental Enforcement Act, but for which provincial staff have been appointed per province to carry out these supervisory duties, namely:

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

Despite the fact that this legislation is not included in the Environmental Enforcement Act, this supervision and any related inspections or inspectors are briefly discussed below in this Environmental Enforcement Report 2010.

The table above not only gives an overview of the fact that provincial supervisors were not appointed, but also indicates how many provincial staff, appointed for the inspection of the unnavigable watercourses, the province had at its disposal in 2010. Not each province had such a provincial staff member at its disposal in 2010 to carry out the relevant inspections.

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

##### Appointed provincial staff

As indicated earlier, the provinces can appoint provincial staff to carry out inspections of unnavigable watercourses (other than those included in the Environmental Enforcement Act). The table and graph below

<sup>56</sup> As mentioned in Article 16.3.1,§1, 2° of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy (DABM).

<sup>57</sup> Inspections carried out within the framework of the Act of 28 December 1967 on unnavigable watercourses and the Royal Decree of 5 August 1967 containing the general police regulations on unnavigable watercourses by appointed provincial personnel.

<sup>58</sup> Infringements in the open countryside: Breaches of environmental health regulations which are not linked to a regulated installation or activity, such as dumping of waste, incineration of waste (definition from the glossary at [www.vhrm.be](http://www.vhrm.be)).

not just show the number of provincial staff members who are authorised to inspect the unnavigable watercourses, but also the number of FTEs that were dedicated to these inspections by these appointed provincial staff members.

	Provincial staff appointed for inspections of unnavigable watercourses	FTEs dedicated to inspections of unnavigable watercourses by appointed provincial staff
Limburg	7	0.5
Flemish Brabant	0	0
Antwerp	7	2.5
East Flanders	2	0.05
West Flanders	4	0

*Table 21 Number of appointed provincial staff members and the amount of time they dedicated to unnavigable watercourses in 2010*

The above data show that, despite the fact that the majority of the provinces have at least two provincial staff members at their disposal to monitor the unnavigable watercourses, hardly any FTEs were dedicated to these duties in 2010. The most striking example is West Flanders province where 4 of these provincial staff members were appointed, but where not one single FTE was dedicated to the inspections of unnavigable watercourses.

#### Efforts with regard to unnavigable watercourses

The graph and table below give an overview of the number of inspections that were carried out by the provincial staff members with regard to unnavigable 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.

	Province				
	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Number of inspections of unnavigable watercourses	50	0	100	29	0
Number of official reports drawn up during these inspections of unnavigable watercourses	2	0	0	0	0
Number of exhortations formulated during these inspections of unnavigable watercourses	10	0	100	15	0

*Table 22 Number of inspections of unnavigable watercourses in 2010 and number of exhortations formulated and official reports drawn up during these inspections*

In clarification of the data above it must be mentioned that when asked after the number of inspections that were carried out, the province of Antwerp responded that the inspections took place on a permanent basis. In order to include this in the graph, the number of inspections was equated with the number of exhortations, namely 100, since not one official report had been drawn up. The province of East Flanders also indicated that 29 inspections were carried out and that no official reports were drawn up, but 15 exhortations were formulated. An exhortation, as entered in the Environmental Enforcement Act (Article

16.3.27) can only be formulated, however, following an identified offence and when an official report has thus also been drawn up. With an exhortation the suspected offender and any other parties involved are exhorted to take the necessary measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition. The exhortation is a curative instrument which precedes the administrative enforcement and is always used in combination with an official report. If an exhortation in the context of the inspections of unnavigable watercourses within the framework of the Act of 28 December 1967 on unnavigable watercourses and the Royal Decree of 5 August 1970 containing the general police regulations on unnavigable watercourses would have the same meaning, such action would not be legitimate.

The table below gives an overview of the breaches that were identified by the provinces of Antwerp, Limburg and East Flanders. The provinces of Flemish Brabant and West Flanders did not carry out any monitoring of compliance with the legislation above.

Type of breaches:	Province				
	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Damage to banks	1	0	25	6	0
Discharge into watercourse	5	0	10	0	0
Other	6	0	65	23	0

Table 23 *Type of breaches regarding unnavigable watercourses in 2010*

The province of East Flanders reported 6 breaches regarding damage to banks and 23 other breaches. This is a total of 29 breaches, whereas only 15 exhortations were formulated and not one single official report was drawn up. 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 taking further action once a breach has been identified is therefore contrary to the above-mentioned legal provision.

During the inspections of unnavigable watercourses the province of Antwerp identified a number of breaches with regard to damage to banks, discharges into watercourses, violations of the 1-metre and 5-metre zones and structures in the watercourse. A total of 100 breaches were identified and 100 exhortations were also formulated. However, no official reports were drawn up. The same problem thus occurs here as in the province of East Flanders.

In Limburg 12 breaches were identified and 10 exhortations were formulated, but only 2 official reports were drawn up, which means that again there is the same problem in Limburg as in the other two provinces.

### 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 performance 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 the 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. In this report the following topics are discussed, with reference to the agreements made: instruments, waste, product use, water, nuisance, energy, mobility, nature and soil and sustainable development.

In each province these supporting duties are organised through one-stop shops, organising regional meetings and (co-)organising training pathways.

The provincial training institutions are recognised to provide local supervisor training: PIVO organised the course for the school year 2009/2010 for the provinces of Flemish Brabant and Limburg, INOVANT organised the entire course in 2010 for the province of Antwerp and OBAC organised the course for the school year 2010/2011 for the provinces of East and West Flanders.

The province of Limburg uses the provincial contact points to answer the questions on environmental enforcement received by the one-stop shop.

The province of Flemish Brabant organised a survey in 2010 among municipalities with regard to the training needs regarding environmental nuisance and air quality. The new training courses will be designed on the basis of these data.

The consultations between the environmental officers included the topics of environmental enforcement and supervision. In 2010, the municipal authorities could address any questions about environment and nature to the Regional Environmental Activities Unit.

In the province of East Flanders the theme 'enforcement' is discussed via the Provincial Environmental Network for police and environmental officers. In 2010, a meeting was organised around 'environmental enforcement in practice'. In addition, two training days were organised under the title 'enforcement of the environmental legislation'.

The province of East Flanders supports the municipalities in terms of enforcement via the permanent help desk and the use of experts from the Provinciaal Centrum voor Milieuonderzoek or PCM (Provincial Centre for Environmental Research).

Following the visits to municipalities in 2010, the province reported that many (mainly smaller) municipalities do not carry out any proactive inspections, since this requires additional efforts from the environmental department as well as additional support from policy makers.

A number of municipalities were encouraged by the province to initiate more structured consultations.

In 2010, the province of West Flanders organised a study day around 'littering' for municipalities, where the theme of 'enforcement' was addressed as well.

Together with the intermunicipal authorities WVI and Leiedal regional meetings were organised where

the themes of 'VLAREM-VLAREBO' and 'enforcement' were discussed. More explanation was given about the Addendum to the Cooperation Agreement (by the Association of Flemish Cities and Municipalities) and the Cooperation between the Environmental Inspectorate and the municipality around the themes of supervision and enforcement (by the Environmental Inspectorate).

At the end of 2010, the province of West Flanders organised an information afternoon around environmental enforcement. The Environmental Inspectorate Division explained the general framework of the Environmental Enforcement Act and the public prosecutor's office of Kortrijk talked about the activities and role of public prosecutor's offices. This information afternoon was attended by many environmental officers and supervisors from the police districts who were questioned at large about their needs for consultation and training regarding environmental enforcement. The provision for the coming years will be aligned with the information from this survey.

Questions about enforcement are dealt with by the Municipal Support Office. The theme is also taken into consideration during the on-site visits which the province pays to all its municipalities within the framework of the cooperation agreement.

In the province of Antwerp the questions about environmental enforcement and the training required that are addressed to the one-stop shop are referred by the team of regional managers to the Enforcement Unit within the Provinciaal Instituut voor Hygiëne or PIH (Provincial Institute for Hygiene). To this end, the Enforcement Unit works in close cooperation with the PIH experts.

In 2010, the Enforcement Unit not only treated questions addressed to the one-stop shop, but also drew up three electronic newsletters on environmental enforcement which it forwarded to the environmental officers and the local police. These newsletters clearly explain topical themes regarding enforcement as well as new information.

Within the context of training the 'Platform for Enforcement' was set up, featuring the theme 'hotel and catering industry', and local courses on 'illegal waste incineration' and 'illegal dumping' were organised. Within the framework of these courses concrete information is provided which can 'immediately' be used in the context of environmental enforcement.

Periodical consultations were planned in the local police districts where the topics of 'enforcement in general', 'biodiversity and animal welfare', 'fireworks' and the 'species decree' were explained and 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 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 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

Contrary to the Environmental Enforcement Report 2009 the mayors of the Flemish cities and municipalities were questioned about the imposed administrative measures and safety measures in the context of the Environmental Enforcement Report 2010 that was drawn up. The survey was carried out by analogy with the survey among the municipal supervisors (cf Chapter 2.3.4.2). In total the VHRM received a response from 185 of the 308 Flemish mayors about their competences regarding the imposition of administrative measures and safety 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 2010.

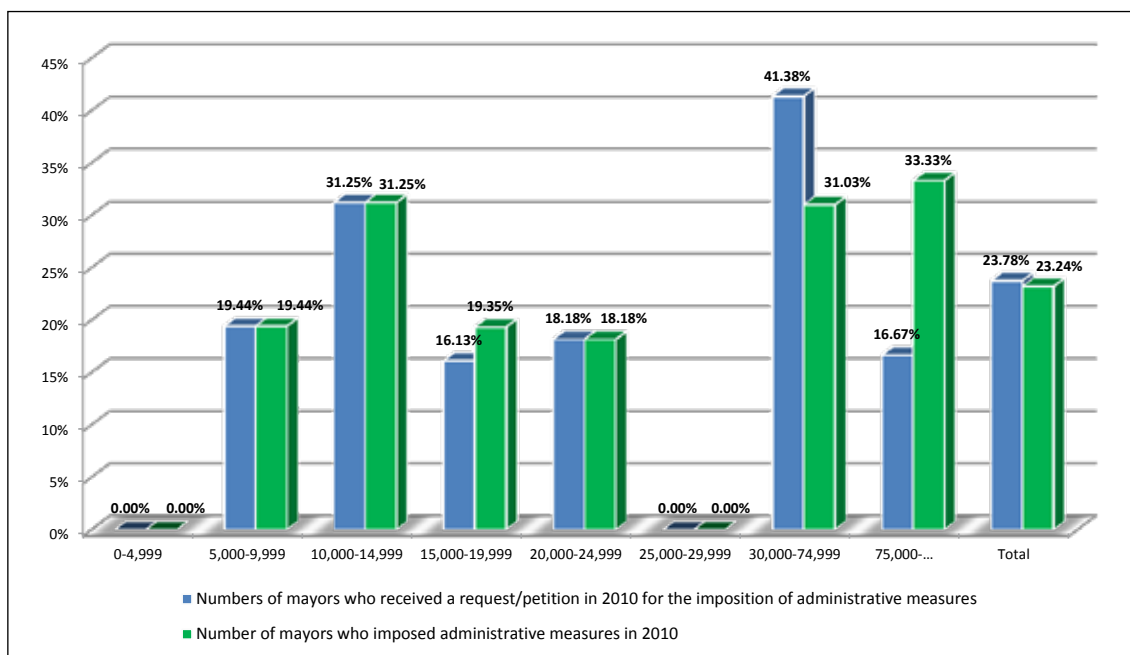
Under the term ‘request for the imposition of administrative measures’ belong any requests to impose administrative measures from supervisors, provincial governors...to the people as referred to in Article 16.4.6 of the Environmental Enforcement Act who are authorised to take administrative measures, 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.

**Administrative measures**

Mayor of:	Number of responding mayors	Number of mayors who received a request/petition in 2010 for the imposition of administrative measures	Number of mayors who imposed administrative measures in 2010
Municipalities with 0-4,999 inhabitants	5	0	0
Municipalities with 5,000-9,999 inhabitants	36	7	7
Municipalities with 10,000-14,999 inhabitants	48	15	15
Municipalities with 15,000-19,999 inhabitants	31	5	6
Municipalities with 20,000-24,999 inhabitants	22	4	4
Municipalities with 25,000-29,999 inhabitants	8	0	0
Cities and municipalities with 30,000-74,999 inhabitants	29	12	9
Cities with more than 75,000 inhabitants	6	1	2
<b>Total</b>	<b>185</b>	<b>44</b>	<b>43</b>

*Table 24 Response rate of the mayors of the Flemish cities and municipalities and the number of these mayors who received a request/petition in 2010 for the imposition of administrative measures and the number of mayors who imposed administrative measures in 2010*



*Graph 18 Number of mayors who received a request/petition in 2010 for the imposition of administrative measures and the number of mayors who imposed administrative measures in 2010*

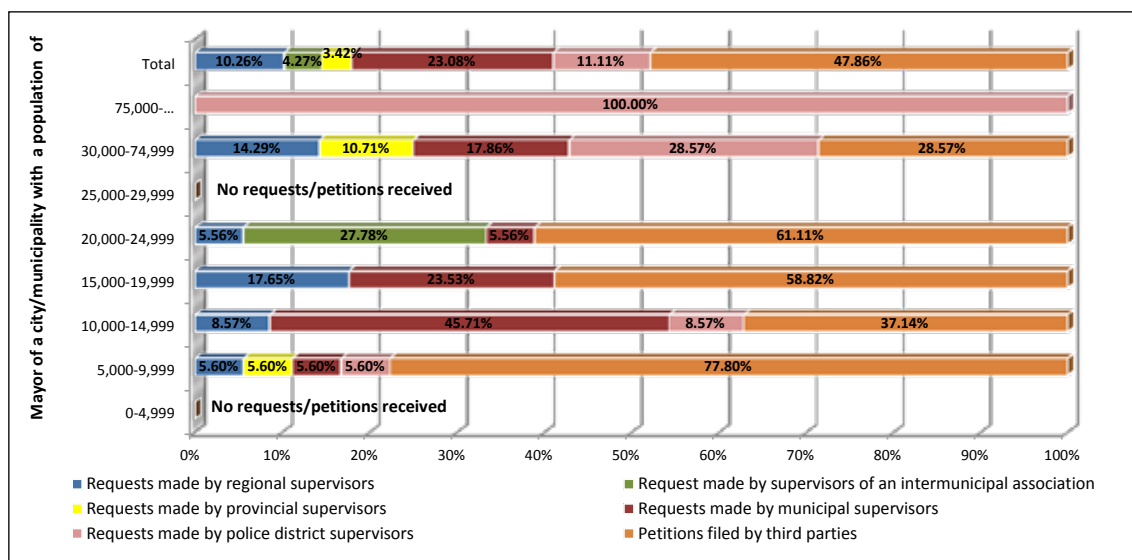
In total, 41 out of the 185 responding mayors received a request or petition for the imposition of administrative measures. 40 of the responding mayors actually imposed administrative measures, either on the basis of a request/petition or at their own initiative. This is nearly 25% of the responding mayors.

In the beginning of this section the difference between petitions and requests for the imposition of administrative measures was explained. Therefore, the Flemish mayors were asked how many petitions they received in 2010 and how many requests, and from whom they had received these requests.

The table and graph below give an overview of the number of petitions and requests that were submitted to the mayors in the different categories of cities and municipalities and 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 2010:	0	18	35	17	18	0	28	1	117
	Requests made by regional supervisors:	0	1	3	3	1	0	4	0	12
	Requests made by municipal supervisors:	0	1	16	4	1	0	5	0	27
	Requests made by supervisors of an intermunicipal association:	0	0	0	0	5	0	0	0	5
	Requests made by police district supervisors:	0	1	3	0	0	0	8	1	13
	Requests made by provincial supervisors:	0	1	0	0	0	0	3	0	4
	Petitions filed by third parties:	0	14	13	10	11	0	8	0	56

*Table 25 Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2010*



Graph 19 *Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2010*

A total of 18 requests/petitions were submitted to 7 mayors in the category with 5,000 to 9,999 inhabitants. In the category with 10,000 to 14,999 inhabitants 35 petitions/requests for the imposition of administrative measures were submitted to 15 mayors. In the category with 15,000 to 19,000 inhabitants this amounted to 17 requests/petitions to 5 mayors, in the category with 20,000 to 24,000 inhabitants to 18 requests and petitions to 4 mayors and in the category with 30,000 to 74,999 inhabitants to 28 requests to 12 mayors. In the largest category 1 request was submitted to 1 mayor. This means that a total of 117 requests/petitions for the imposition of administrative measures were submitted to the Flemish mayors in 2010. In nearly 48% of the cases it concerned petitions from third parties. More than 52% related to requests from supervisors to the mayors to impose administrative measures, despite the fact that supervisors themselves have the authority to impose administrative measures.

The majority of the requests for the imposition of administrative measures addressed to mayors originate from municipal supervisors, namely over 44%.

A rather peculiar fact is that it was indicated that 4 requests for the imposition of administrative measures were submitted by provincial supervisors. As indicated earlier, no provincial supervisors had been appointed yet so far. This may indicate that not everyone is equally familiarised with the provisions in the Environmental Enforcement Act. It is likely that 'the province' (no supervisor available) is confused with the 'local provincial services of the Government of Flanders' (supervisors available).

As mentioned earlier, 40 mayors indicated having actually imposed administrative measures, either following a request/petition or at their own initiative.

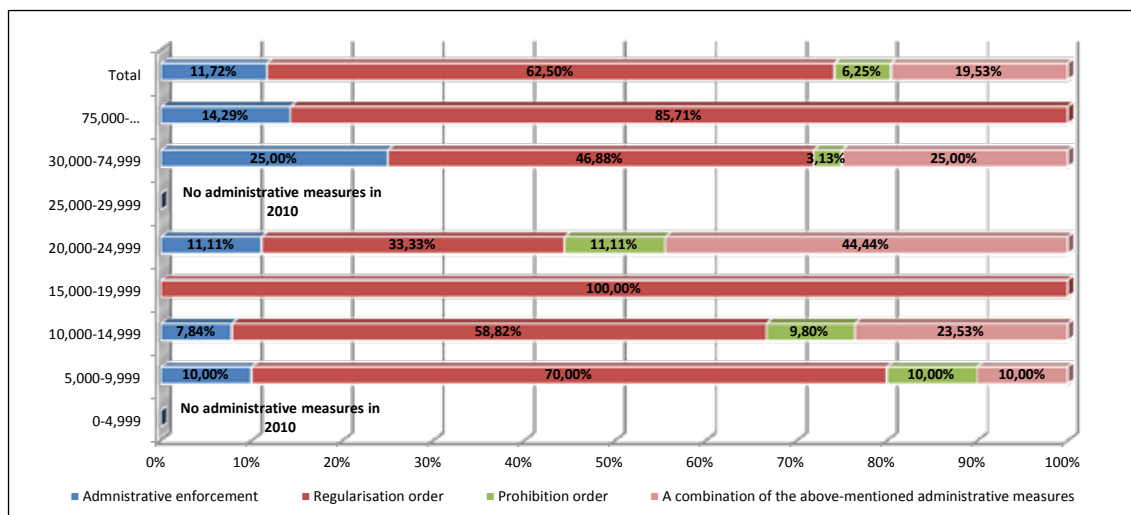
The table and graph below give an overview of the number of imposed administrative measures and the nature of these measures.

These are the administrative measures that may be imposed:

- ▶ 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.

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-...
Administrative measures imposed by mayors	Administrative measures imposed by mayors in 2010	0	10	51	19	9	0	32	7
	Prohibition order:	0	1	4	0	1	0	8	1
	Regularisation order:	0	7	30	19	3	0	15	6
	Administrative enforcement:	0	1	5	0	1	0	1	0
	A combination of the above-mentioned administrative measures:	0	1	12	0	4	0	8	0
	It was not possible to have the measure carried out within the imposed term:	0	2	8	2	1	0	6	2

Table 26 *Administrative measures imposed by the mayors of the Flemish cities and municipalities in 2010*



Graph 20 Administrative measures imposed by the mayors of the Flemish cities and municipalities in 2010

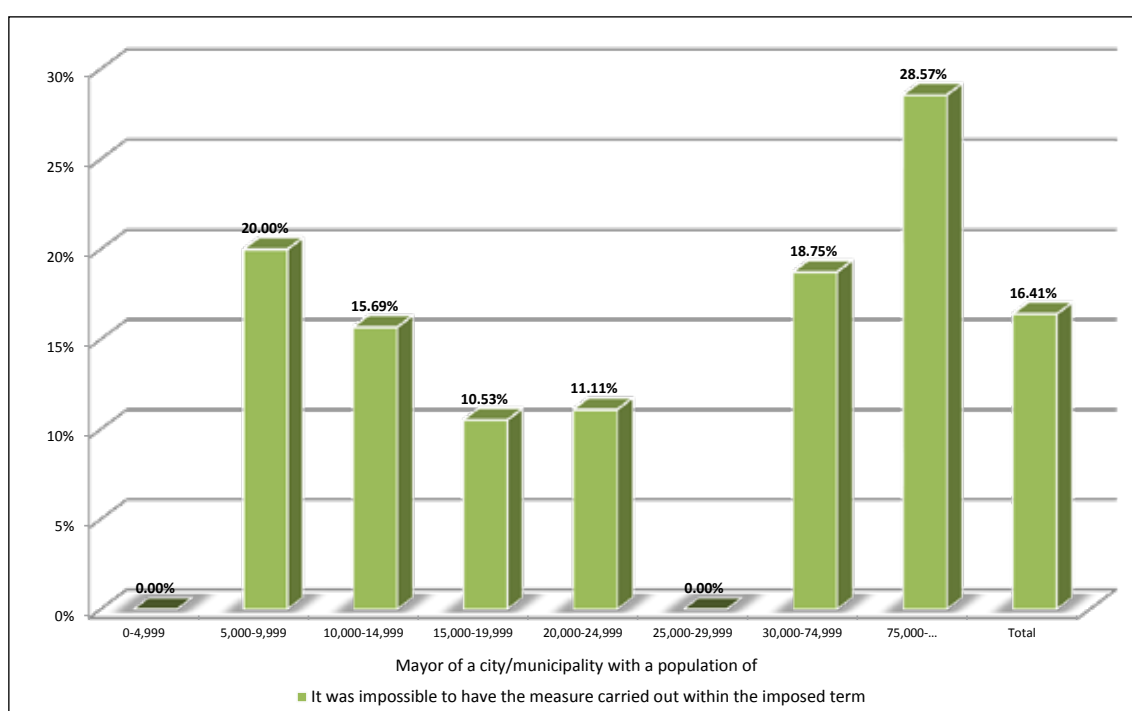
In total, 128 administrative measures were imposed by the mayors in the Flemish Region, mainly in municipalities and cities with 10,000 to 14,999 and 30,000 to 74,999 inhabitants.

The majority of the administrative measures imposed by the mayors in 2010 were regularisation orders, viz. 62.50%, whereas in only 6.25% of the cases administrative enforcement was used.

In general, it could be stated that this instrument has already been introduced in the environmental enforcement activities of the mayors in the Flemish Region.

In order to examine the effectiveness of this instrument, the VHRM has 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.

In the graph below an overview is given of the percentage of cases in which it was impossible to have the administrative measure, as it was imposed by the mayor, implemented.



*Graph 21 Percentage share of administrative measures which could not be implemented within the imposed term*

It was reported that 21 out of the total of 128 administrative measures imposed by the mayors were not implemented within the imposed term. Since this is only 16.41% of the total of imposed administrative measures, it can certainly not be concluded that this enforcement instrument is not effective.

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 in order 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):

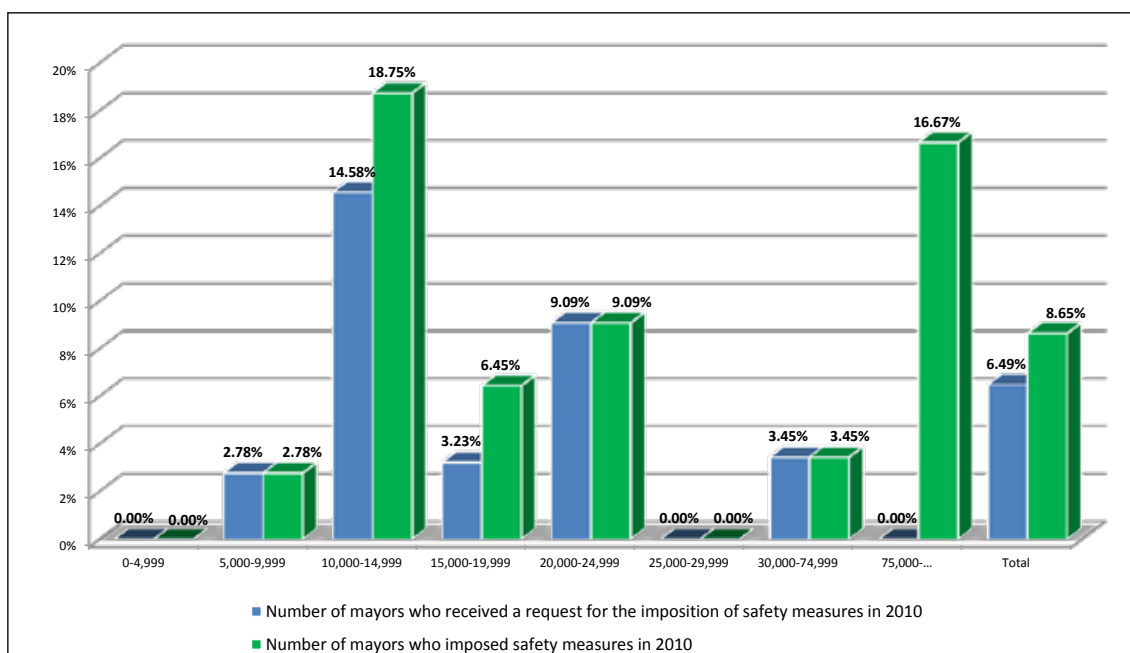
- ▶ the suspension or execution of works, actions or activities, immediately or within a given term;
- ▶ the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon;
- ▶ the complete or partial 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 graph and table below give 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.

**Safety measures**

Mayor of:	Number of responding mayors	Number of mayors who received a request for the imposition of safety measures in 2010	Number of mayors who imposed safety measures in 2010
Municipalities with 0-4,999 inhabitants	5	0	0
Municipalities with 5,000-9,999 inhabitants	36	1	1
Municipalities with 10,000-14,999 inhabitants	48	7	9
Municipalities with 15,000-19,999 inhabitants	31	1	2
Municipalities with 20,000-24,999 inhabitants	22	2	2
Municipalities with 25,000-29,999 inhabitants	8	0	0
Cities and municipalities with 30,000-74,999 inhabitants	29	1	1
Cities with more than 75,000 inhabitants	6	0	1
<b>Total</b>	<b>185</b>	<b>12</b>	<b>16</b>

*Table 27 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 2010 and the number of mayors who imposed safety measures in 2010*



*Graph 22 Number of mayors who received a request for the imposition of safety measures in 2010 and the number of mayors who imposed safety measures in 2010*

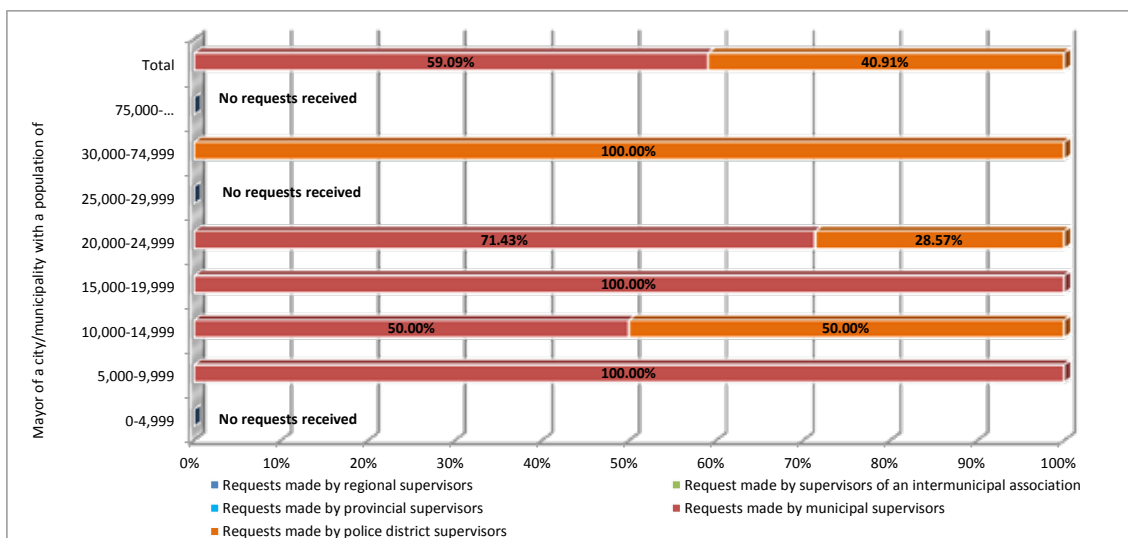
Only 12 of the 185 responding mayors received a request for the imposition of safety measures. On the other hand, 16 mayors reported that they imposed at least one safety measure in 2010, either following a request or by virtue of their function. Especially in the municipalities with 10,000 to 14,999 inhabitants a considerable number of mayors indicated that they had received a request for the imposition of safety measures and did actually impose safety measures. Respectively 7 or 14.58% of the responding mayors in that category received a request and 9 mayors or 18.75% imposed safety measures. This may have to be put into perspective, since it is precisely this category in which the largest number of mayors responded.



The table and graph below provide an overview of the number of requests that were submitted to the mayors for the imposition of administrative measures and indicate which supervisors submitted these requests.

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-...
Requests for the imposition of safety measures	Requests received by the mayor between 1 January 2010 and 31 December 2010:	0	1	12	1	7	0	1	0
	Requests made by regional supervisors:	0	0	0	0	0	0	0	0
	Requests made by municipal supervisors:	0	1	6	1	5	0	0	0
	Requests made by supervisors of an inter-municipal association:	0	0	0	0	0	0	0	0
	Requests made by police district supervisors:	0	0	6	0	2	0	1	0
	Requests made by provincial supervisors:	0	0	0	0	0	0	0	0

**Table 28** *Requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2010*



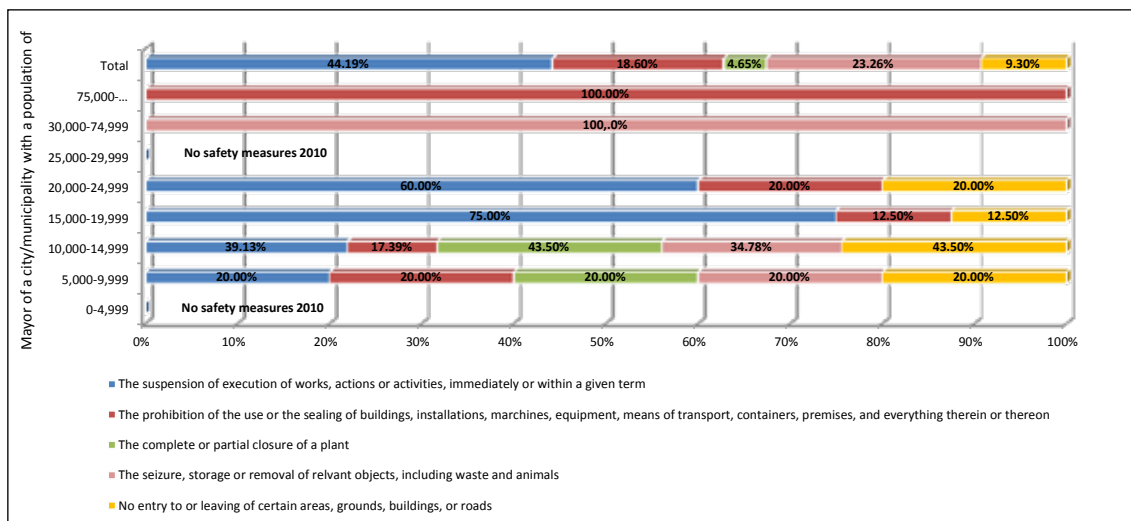
*Graph 23 Requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2010*

It is striking that not one single mayor has received a request for the imposition of safety measures from the regional supervisors. This may be due to the fact that - despite each supervisor having the authority to impose safety measures - regional supervisors will rather impose a safety measure themselves, whereas municipal supervisors and local police supervisors, who requested the mayor 13 and 9 times respectively to impose a safety measure, are more inclined to request the mayor to impose a safety measure. However, this will become clearer when the safety measure is discussed separately as an instrument in Chapter 3.

The table and graph below give 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 2010 and 31 December 2010:	0	5	23	8	5	0	1	1
	the suspension or execution of works, actions or activities, immediately or within a given term	0	1	9	6	3	0	0	0
	the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	0	1	4	1	1	0	0	1
	the complete or partial closure of a plant	0	1	1	0	0	0	0	0
	the seizure, storage or removal of relevant objects, including waste and animals	0	1	8	0	0	0	1	0
	no entry to or leaving of certain areas, grounds, buildings, or roads	0	1	1	1	1	0	0	0
	It was not possible to have the measure carried out within the imposed term:	0	0	2	0	2	0	0	0

Table 29 Safety measures imposed by the mayors of the Flemish cities and municipalities in 2010

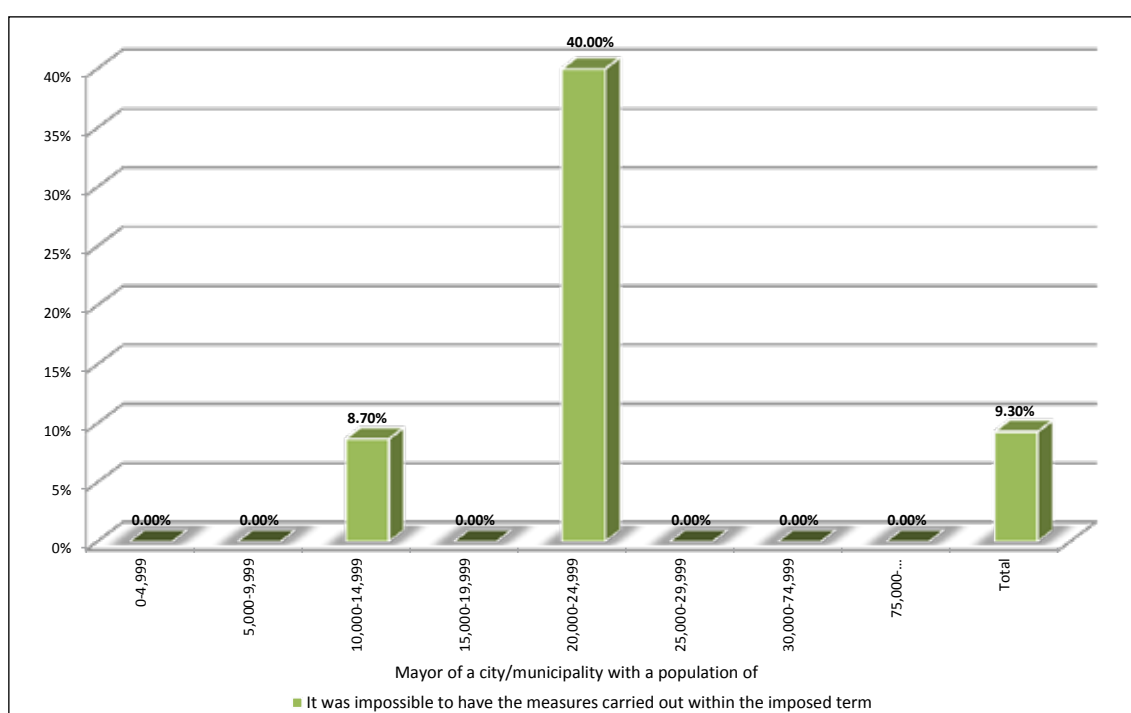


Graph 24 Safety measures imposed by the mayors of the Flemish cities and municipalities in 2010

A total of 43 safety measures were imposed by mayors in 2010. Taking the aforementioned into account, this means that at least 21 safety measures were imposed by the mayors by virtue of their function, which means at their own initiative, since it was reported that the mayors received a total of 22 requests for the imposition of safety measures.

The majority of the total of imposed safety measures, namely 44.19%, concerned the suspension or execution of works, actions or activities, immediately or within a given term. The different types of safety measure were each imposed at least twice by the mayors.

Contrary to the other categories, the mayors of the municipalities in the category with 10,000 to 14,999 inhabitants received a lot more requests, namely 12, and also imposed the largest number of safety measures, namely 23. This distorted picture could be explained by the fact that in this same category the largest number of mayors sent a response to the VHRM.



Graph 25 Percentage share of safety measures which could not be implemented within the imposed term

Only for 9.30% of the safety measures imposed by the mayors was it impossible to have the measure carried out within the imposed term. However, in the category of municipalities with 20,000 to 24,999 inhabitants this amounted to 40%. Here, mainly the suspension or execution of works, actions or activities were imposed, immediately or within a given term. However, it is unclear why the rate of compliance within this category is rather low, namely 60% of the safety measures imposed by the mayor, whereas this is on average 90.70%.

Since the rate of compliance with the safety measures imposed by the mayor is 90.70%, it can certainly not be concluded that the instrument 'safety measures' is not effective. Chapter 3 discusses the instrument and the use thereof by the different supervisors. This will allow us to draw more general conclusions.

#### 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, by analogy with the Environmental Enforcement Report 2009, via a questionnaire 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 those 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. In the present chapter an attempt will be made to provide 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.

### Response from the municipalities concerning the request for input

In order to put the figures below 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 2010.

In total, the VHRM received an answer from 185 of the 308 Flemish municipalities. A list of these municipalities can be found in Appendix 1 to this report.

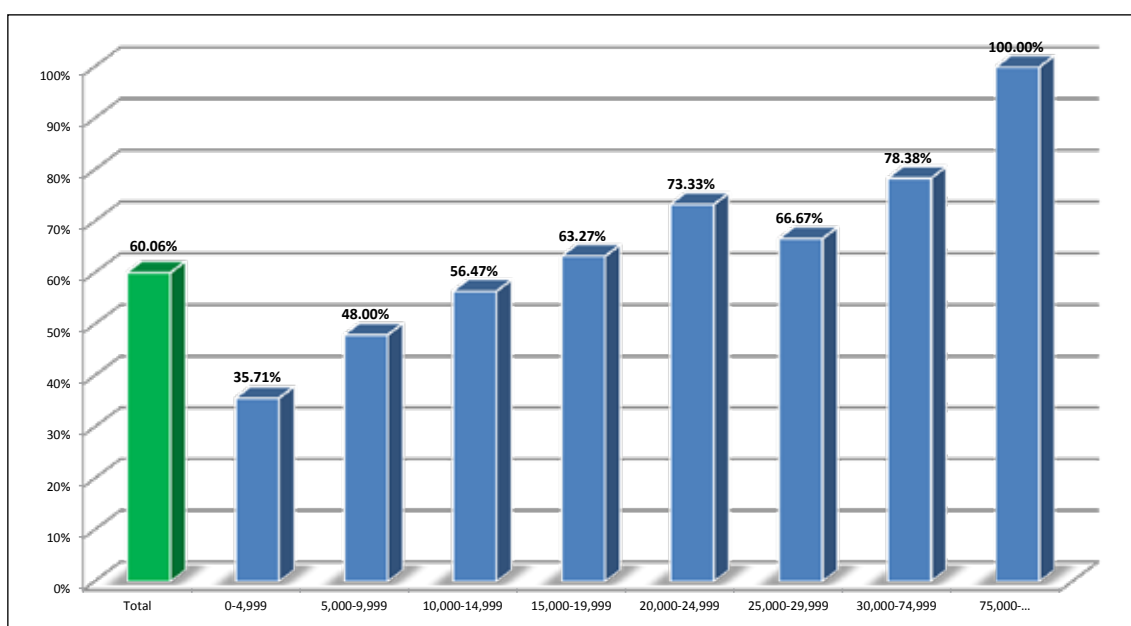
In order to get an idea of the differences between the different ‘types’ of municipalities, it was decided to present the municipalities’ results according to 8 categories based on the population of the municipality:

	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	5
Municipalities with 5,000-9,999 inhabitants	75	36
Municipalities with 10,000-14,999 inhabitants	85	48
Municipalities with 15,000-19,999 inhabitants	49	31
Municipalities with 20,000-24,999 inhabitants	30	22
Municipalities with 25,000-29,999 inhabitants	12	8
Cities and municipalities with 30,000-74,999 inhabitants	37	29
Cities with more than 75,000 inhabitants	6	6
<b>Total</b>	<b>308</b>	<b>185</b>

*Table 30 Categories of Flemish cities and municipalities, including number of cities and municipalities per category and number of respondents per category*

The categories were divided on the basis of the number of inhabitants provided by the municipalities in the questionnaire.

When the Environmental Enforcement Report 2009 was drawn up, the VHRM received an answer from a total of 193 municipalities (62.66%). Despite the fact that the response increased in a number of categories, the largest decrease was reported in the category of municipalities with 5,000 to 9,999 inhabitants. For the Environmental Enforcement Report 2009 no less than 49 of the 75 municipalities in that category responded, whereas this number has decreased to 36 for the present report.



Graph 26 Response rate (%) to questionnaire for municipalities (according to population)

With respect to the 308 Flemish cities and municipalities the VHRM received answers from 60.06% of the municipalities. Only for municipalities with a population of 0 to 4,999 and 5,000 to 9,999 the response is low (5 out of 14 municipalities and 36 out of 75 municipalities respectively responded), and the question arises whether definitive conclusions can be drawn with respect to this category.

For the other categories of municipalities the degree of response varies between 56.47% and 100% of the municipalities and cities in this category. For these categories it is assumed, in view of the conclusions of the present report, that they are representative for the municipalities of the category they represent. Account will probably have to be taken of the fact that those who responded are more strongly involved in environmental enforcement.

### Efforts related to environmental enforcement duties

#### Nuisance-causing plants per municipality

Cities and municipalities were asked how many licensed plants falling into Categories 1, 2 and 3 according to Appendix I to Title I of Vlarem are located on their territory, and at what number they estimated the presence of unlicensed nuisance-causing plants in their city/municipality. 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 estimate and assess efforts in the area of environmental supervision. 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 indicates an 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			Category 2 plants			Category 3 plants			Unlicensed plants		
		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 that have no information on number of unlicensed plants
0-4,999	5	41	8.20	0	109	21.80	0	370	74	0	0	0	1
5,000-9,999	36	1,305	39.55	3	4,116	124.73	3	10,379	334.81	5	533	19.74 <sup>59</sup>	9
10,000-14,999	48	1,284	29.18	4	4,806	109.23	4	18,062	430.05	6	629	26.21 <sup>60</sup>	24
15,000-19,999	31	884	29.47	1	4,836	161.20	1	14,966	498.87	1	189	13.50 <sup>61</sup>	17
20,000-24,999	22	570	25.91	0	4,275	194.32	0	15,907	723.05	0	315	22.50 <sup>62</sup>	8
25,000-29,999	8	2,110	301.43	1	4,679	668.43	1	7,189	1,198.17	2	20	5.00 <sup>63</sup>	4
30,000-74,999	29	2,910	111.92	3	9,468	350.67	2	25,856	994.46	3	437	33.62 <sup>64</sup>	16
75,000-...	6	1,292	258.40	1	6,319	1,053.17	0	22,243	3,707.17	0	100	33.33 <sup>65</sup>	3
<b>Total</b>	<b>185</b>	<b>10,396</b>	<b>60.44</b>	<b>13</b>	<b>38,608</b>	<b>221.89</b>	<b>11</b>	<b>114,972</b>	<b>684.36</b>	<b>17</b>	<b>2,223</b>	<b>21.58</b>	<b>82</b>

Table 31 Nuisance-causing plants per municipality

59 5 municipalities reported 0 unlicensed plants. When taking this number into account, the average number would be 24.23 for the municipalities that reported a number of unlicensed plants.  
60 12 municipalities reported 0 unlicensed plants. When taking this number into account, the average number would be 52.42 for the municipalities that reported a number of unlicensed plants.  
61 6 municipalities reported 0 unlicensed plants. When taking this number into account, the average number would be 23.63 for the municipalities that reported a number of unlicensed plants.  
62 5 municipalities reported 0 unlicensed plants. When taking this number into account, the average number would be 35.00 for the municipalities that reported a number of unlicensed plants.  
63 3 municipalities reported 0 unlicensed plants. The 20 unlicensed plants are thus mentioned on the reply sheet of 1 municipality.  
64 5 municipalities reported 0 unlicensed plants. When taking this number into account, the average number would be 54.63 for the municipalities that reported a number of unlicensed plants.  
65 2 municipalities reported 0 unlicensed plants. The 100 unlicensed plants are thus mentioned on the reply sheet of 1 municipality.



The 185 responding municipalities reported 10,396 licensed Category 1 plants on their territory. Based on these figures, the supervisory duty of a Flemish municipality could therefore be said to refer to 60.44 Category 1 plants. However, it should be taken into account that 13 municipalities were unable to indicate the number of Category 1 plants on their territory. These figures differ greatly from those that were reported for the Environmental Enforcement Report 2009. Despite the fact that 193 municipalities had responded that year, the average of Category 1 plants per municipality was significantly lower, namely 42.26. 23 municipalities did not have any information about the number of Category 1 plants. A great difference can be reported among the municipalities with 25,000 to 29,999 inhabitants. Despite the fact that 1 municipality less sent a response in this category for this report, the total number of Category 1 plants rose substantially, namely from 284 in 2009 to 2,110 in 2010.

The number of municipalities that have no information on the number of Category 2 plants on their territory is 11 or nearly 6%. When it comes to the number of plants subject to a reporting obligation, this number increases to 17 of the 185 responding municipalities, or 9.20%. However, this is a decrease compared to the Environmental Enforcement Report 2009. This can therefore be considered a positive evolution. The municipalities start to gain better insight into the type and number of plants on their territory. In contrast to 2009 more municipalities could use figures on the number of nuisance-causing plants on their territory to draw up an efficient inspection plan or to efficiently organise or assess the efforts regarding environmental enforcement.

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. Municipalities with more than three hundred Category 2 plants are required to have two supervisors at their disposal within two years of the coming into effect of the Environmental Enforcement Act and its implementing orders.

The municipalities that turn out to be best informed of the number of nuisance-causing plants falling within their competence are those in the categories with 0 to 4,999 and 20,000 to 24,999 inhabitants. Not one single municipality in these categories has indicated not having any information about the number of Category 1, 2 or 3 plants.

However, it is not surprising to find that some of the municipalities were unable to indicate the number of Category 1, 2 and 3 plants. The fact that there is uncertainty as to the exact numbers already became apparent in the parliamentary discussions on the peak in environmental licences in the months of March and May of 2010<sup>66</sup>. The problem here is that there are several databases with data on environmental licences, and that the information is therefore fragmented. During these parliamentary discussions, however, it was mentioned that a Flemish information system that integrates data from the Flemish Region, the provinces and the municipalities is being prepared. The Flemish Parliament Act of 11 June 2010 amending the Flemish Parliament Act of 28 June 1985 on environmental licences by introducing measures related to the peak in environmental licences adds Article 28bis, which stipulates that the Environmental Licences Division of the Department of Environment, Nature and Energy shall keep a database of environmental licences. The Government of Flanders shall determine the content of the database of environmental licences, the data to be delivered to the aforementioned division by municipalities and provinces, and the way in which this delivery should take place. As a result, better information will be available in future with a view to the development of a relevant policy.

The general trend in these data is that in 2010 the municipalities had a better insight into the number of nuisance-causing plants on their territory. For 2009, almost 12% of the municipalities indicated not having any information about the number of Category 1 plants on their territory, whereas this number

66 Parliamentary proceedings, document 287 (2209-2010) no. 4, 18 May 2010.

decreased to just over 7% in 2010. With regard to Category 2 plants, a decrease was reported from almost 12% to nearly 6% of the municipalities that did not have any information about the number of plants. For the Environmental Enforcement Report 2009 almost 17% of the responding municipalities indicated not knowing how many Category 3 plants were on their territory, whereas for the Environmental Enforcement Report 2010 this decreased to just over 9%.

Besides the question about the number of licensed nuisance-causing plants, the cities and municipalities were also asked about the estimated number of unlicensed plants on their territory. 65 of the 185 responding municipalities indicated knowing about a total of 2,223 unlicensed plants, whereas 82 municipalities reported not having any knowledge of the number of unlicensed plants. 38 municipalities reported that no unlicensed plants were present on their territory in 2010. The average number of unlicensed plants of the municipalities that did indicate that unlicensed plants were present on their territory in 2010 amounts to 34.58. It is remarkable that a city from the category with more than 75,000 inhabitants indicated that it estimated the number of unlicensed plants at 100. Still, the total number of estimated unlicensed plants decreased in 2010 compared to the Environmental Enforcement Report 2009 from 4,056 to 2,223. This positive trend shows that the municipalities have in any case taken action with regard to the unlicensed plants on their territory.

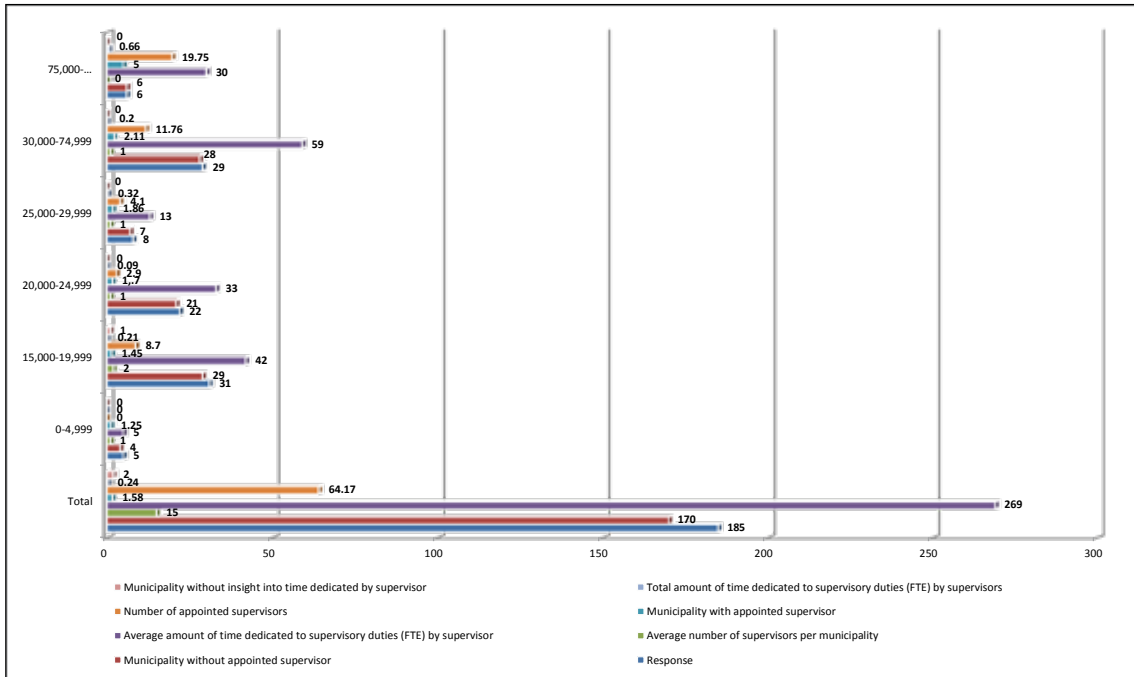
The figures obtained are only representative of the municipalities which responded. Hence, these data cannot be extrapolated to all Flemish municipalities. While a lack of information concerning the number of nuisance-causing plants leads to insufficient possibilities to efficiently and effectively plan environmental enforcement, insight into the number of unlicensed nuisance-causing plants indicates that the municipality knows about a breach of the applicable environmental legislation, and can hence be expected to take action. For this reason, the question arises - despite the positive evolution already established - why municipalities, and, in particular, mayors, did not take any further enforcement action with regard to the remaining unlicensed plants on their territory. As a recommendation to those cities and municipalities, it could therefore be proposed that priority still be given in the municipal inspection plans to the monitoring of these unlicensed nuisance-causing plants.

#### Appointment of municipal supervisors and time dedicated

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, i.e. 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, municipalities with more than three hundred Category 2 plants, according to Title I of Vlarem, 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.

Since the end date of 1 May 2010 expired during the study period, it seemed appropriate to ask the municipalities whether they had '(a) supervisor(s)' or 'a Vlarem official' at their disposal in 2010. This could give an idea of the extent to which the municipalities in the Flemish Region have implemented the Environmental Enforcement Act. Hence, the graph and table below include information on whether the responding municipalities appointed a supervisor. The survey explicitly mentioned whether the municipality had a supervisor or Vlarem official at its disposal, since the municipalities where a Vlarem official was already appointed, did not have to provide for a modification of the appointment of a supervisor in keeping with the Environmental Enforcement Act until by 1 May 2012. Further on in the text the term supervisor will at all times be used, meaning the supervisors within the framework of the Environmental Enforcement Act

and the Vlarem officials who were already appointed prior to the coming into force of the Environmental Enforcement Act. Besides information on the appointment of a supervisor, the number of supervisors and the time dedicated by the supervisor are also presented.



Graph 27 Efforts related to environmental enforcement duties by municipal supervisors (according to population)

	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	185	5	36	48	31	22	8	29	6
Municipality with appointed supervisor	170	4	30	45	29	21	7	28	6
Municipality without appointed supervisor	15	1	6	3	2	1	1	1	0
Number of appointed supervisors	269	5	40	47	42	33	13	59	30
Average number of supervisors per municipality	1.58	1.25	1.33	1.04	1.45	1.57	1.86	2.11	5.00
Total amount of time dedicated to supervisory duties by supervisors (FTEs)	64.17	0.00	3.80	13.16	8.70	2.90	4.10	11.76	19.75
of which FTEs dedicated by the supervisor to environmental enforcement duties within the framework of the Environmental Enforcement Act	41.15	0.00	2.02	8.80	5.08	2.07	2.50	6.68	14.00
of which FTEs dedicated to the administrative support of environmental enforcement duties	23.02	0.00	1.78	4.36	3.62	0.83	1.60	5.08	5.75
Average amount of time dedicated to supervisory duties by supervisors (FTEs)	0.24	0.00	0.10	0.28	0.21	0.09	0.32	0.20	0.66
Municipality that has no information about the time dedicated per supervisor	2	0	1	0	1	0	0	0	0

*Table 32 Efforts related to environmental enforcement duties by municipal supervisors (according to population)*

The table and graph above also provide an overview of the number of municipalities which appointed a supervisor in conformity with the provisions of the Environmental Enforcement Act, and of those municipalities which still need to take action in this respect, since they are in breach of the provisions in the Environmental Enforcement Act.

170 municipalities – or almost 92% – of the 185 Flemish cities and municipalities that responded to the request for information turned out to already have an appointed supervisor at their disposal. In 2010 only 8.11% of the municipalities acted contrary to the obligation of Article 16 of the Decree of 12 December 2008.

Taking into account the declining response, a decrease can still be observed in terms of percentage compared to 2009 in the number of municipalities that did not have a supervisor at their disposal in 2010, namely from 12.44% of the responding municipalities to 8.11%. This decrease probably has to do with the fact that the municipalities had until 1 May 2010 to have an appointed supervisor at their disposal. Due to the fact that in 2010, and thus also after 1 May 2010, no less than 8.11% of the municipalities did not have a supervisor at their disposal, certain actions have to be taken to make them comply with the legal provisions.

When looking at the appointment of supervisors per category of municipalities, one can observe that it is especially the small municipalities which do not yet have a supervisor at their disposal. In the smallest category – that with 0 to 4,999 inhabitants – as few as 1 out of 5 (or 20%) responding municipalities report not having a supervisor at their disposal yet. Next in the ranking, after the smallest municipalities, are the municipalities with 5,000 to 9,999 and those with 25,000 to 29,999 inhabitants. In these categories 16.67% and 12.5% of the municipalities, respectively, do not have a supervisor at their disposal. In the category of cities with more than 75,000 inhabitants none of the responding cities report that they have not yet appointed a supervisor.

For those municipalities that have a supervisor at their disposal, i.e. 170 out of 185 respondents, the total number of supervisors is indicated as well as the average number of supervisors (in relation to the number of responding municipalities that have a supervisor at their disposal).

The 170 aforementioned municipalities had 269 supervisors at their disposal during the study period. This comes down to 1.58 supervisors per average Flemish city or municipality. Graph 32 shows how cities and municipalities carry out this supervisory duty, either with their own personnel, or with personnel from an intermunicipal association or the police district.

Also interesting are the municipalities with more than 30,000 inhabitants. According to the aforementioned 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, this number of inhabitants is a criterion for the appointment of a second supervisor if a municipality has no information on the number of nuisance-causing plants on its territory. Cities and municipalities with more than 75,000 inhabitants seemed to largely fulfil this requirement with an average of 5 supervisors per municipality. Contrary to 2009, the cities and municipalities with 30,000 to 74,999 inhabitants also met this criterion in 2010, since the average number of supervisors per municipality in this category increased from 1.95 to 2.11.

For the other 6 categories of municipalities the average number of supervisors per municipality is 1.42. The average number of supervisors per municipality increases as the number of inhabitants grows. Only the category of municipalities with 10,000 to 14,999 inhabitants does not follow this trend and has the lowest average number of supervisors per municipality, namely 1.04.

Finally, the graph and table also include data on the time the appointed supervisors dedicate to supervisory duties. In the assessment of this element the following figures were taken into account:

- ▶ the total amount of time dedicated to supervisory duties by supervisors in FTEs:

- ▶ of which FTEs dedicated by the supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act
- ▶ of which FTEs dedicated to administrative support for environmental enforcement duties;
- ▶ the average amount of time dedicated to supervisory duties per supervisor in FTEs;
- ▶ the number of municipalities that have no information about the time dedicated per supervisor.

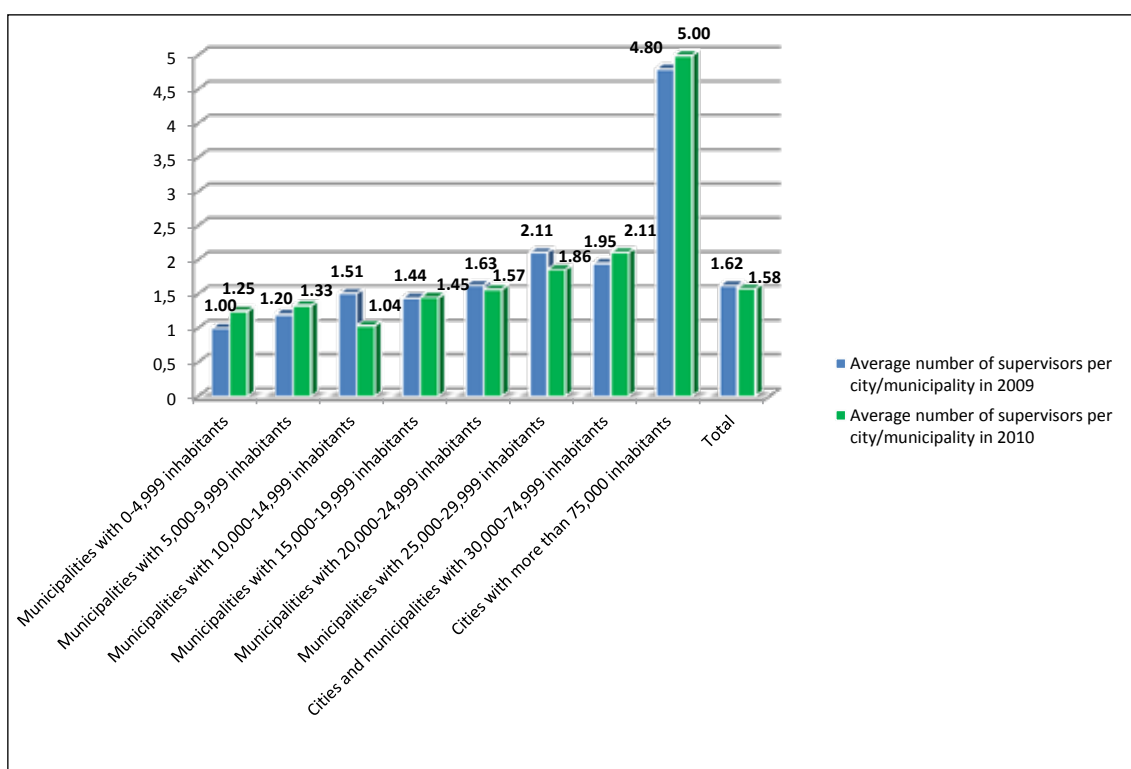
From this information it is clear that only 2 out of 170 municipalities with a supervisor have no insight into the time dedicated by their supervisor. This is a remarkable improvement compared to the 2009 data. For the Environmental Enforcement Report 2009, still 48 of the 169 municipalities with a supervisor indicated not having any insight into the time dedicated by their supervisors. However, such information is essential with a view to setting up targeted enforcement campaigns and/or drawing up an efficient and effective enforcement plan. This progress in the insight of municipalities in the time dedicated by the supervisors can therefore be regarded as a very positive evolution.

The 269 supervisors in the municipalities jointly dedicated a total of 64.17 FTEs to supervisory duties in 2010, of which 41.15 FTEs to environmental enforcement duties within the framework of the Environmental Enforcement Act and 23.02 FTEs to administrative support to enforcement duties. This means that in 2010 a local supervisor was assigned to supervisory duties for an average of 0.24 FTEs. This is a slight increase compared to the 2009 average of 0.19 FTEs.

For the responding Flemish cities and municipalities the amount of time dedicated in FTEs was 52.00 for 274 appointed supervisors. Based on these figures, an average municipal supervisor would be able to actually dedicate 0.19 FTEs to supervisory duties.

As was the case for the number of supervisors, a rising trend can be observed depending on the size of the city/municipality. Whereas the amount of time dedicated in the smallest municipalities is 0.00 and 0.10 FTEs, this is 0.66 FTEs in large cities (more than 75,000 inhabitants). What is remarkable is the gap between these large cities and smaller cities and municipalities with a population of 30,000 to 75,000 inhabitants. In the latter category the amount of time dedicated to supervisory duties per supervisor is only 0.20 FTEs, which puts these cities and municipalities practically on the same level as municipalities with 15,000 to 20,999 inhabitants. What is also remarkable is that in the intermediate group – municipalities with 20,000 to 24,999 inhabitants – appointed supervisors are given significantly less time (only 0.09 FTEs) for the performance of supervisory duties than in the categories with larger and those with smaller populations.

On the basis of the aforementioned data and the data from the Environmental Enforcement Report 2009 a comparison - and possibly an evolution - can be observed in the average number of supervisors per municipality in 2009 and 2010. This is reflected in the graph and table below.



Graph 28 Comparison of the average number of supervisors per city/municipality in 2009 and 2010

	Average number of supervisors per city/municipality in 2009	Average number of supervisors per city/municipality in 2010
Municipalities with 0-4,999 inhabitants	1.00	1.25
Municipalities with 5,000-9,999 inhabitants	1.20	1.33
Municipalities with 10,000-14,999 inhabitants	1.51	1.04
Municipalities with 15,000-19,999 inhabitants	1.44	1.45
Municipalities with 20,000-24,999 inhabitants	1.63	1.57
Municipalities with 25,000-29,999 inhabitants	2.11	1.86
Cities and municipalities with 30,000-74,999 inhabitants	1.95	2.11
Cities with more than 75,000 inhabitants	4.80	5.00
Total	1.62	1.58

Table 33 Comparison of the average number of supervisors per city/municipality in 2009 and 2010

In general it can be stated that the average number of supervisors per municipality has decreased. In total a municipality had an average of 1.62 supervisors at its disposal in 2009. This number decreased in 2010 to on average 1.58 supervisors per municipality. However, this falling trend cannot be observed in every category of municipalities. For instance, the average number of supervisors which a municipality had at its disposal in the categories of municipalities with 0 to 4,999, 5,000 to 9,999, 15,000 to 19,999, 30,000 to 74,999 and more than 75,000 inhabitants increased. The decrease was thus more concentrated in the other three categories of municipalities.

More interesting than the evolution in the number of supervisors may be the evolution in the average amount of time each supervisor dedicated to supervisory duties. Therefore, the table below provides an overview of the average number of FTEs which supervisors dedicated to environmental enforcement duties in 2009 and 2010.

	Average amount of time dedicated to supervisory duties per supervisor in 2009	Average amount of time dedicated to supervisory duties per supervisor in 2010
Total	0.19	0.24
Municipalities with 0-4,999 inhabitants	0.00	0.00
Municipalities with 5,000-9,999 inhabitants	0.10	0.10
Municipalities with 10,000-14,999 inhabitants	0.20	0.28
Municipalities with 15,000-19,999 inhabitants	0.21	0.21
Municipalities with 20,000-24,999 inhabitants	0.09	0.09
Municipalities with 25,000-29,999 inhabitants	0.14	0.32
Cities and municipalities with 30,000-74,999 inhabitants	0.19	0.20
Cities with more than 75,000 inhabitants	0.50	0.66

*Table 34 Comparison of the average amount of time dedicated to supervisory duties per municipal supervisor in 2009 and 2010*

The figures above clearly show that in 2010 more FTEs were dedicated to environmental enforcement duties. This means that a positive evolution can be perceived. Despite the fact that in 2010 fewer supervisors were available within the responding municipalities than in 2009, these supervisors dedicated more of the time available to them to supervisory duties.

In general, the average amount of time dedicated by a supervisor to environmental enforcement duties rose from 0.19 FTEs to 0.24 FTEs. The fact that an appointed supervisor cannot be engaged full-time in supervisory duties may possibly be explained by the fact that the function of supervisor is combined with other functions, especially in the smaller municipalities. This especially becomes evident when looking at the different categories of municipalities. In municipalities with more than 75,000 inhabitants, for instance, the average supervisor dedicated 0.66 FTEs of the available time to supervisory duties, whereas the appointed supervisors in the smallest category of municipalities did not have any time at all to perform supervisory duties. Despite the fact that the average number of supervisors per municipality in this ca-



category rose from 1.00 in 2009 to 1.25 in 2010, the inactivity of these appointed supervisors in terms of supervisory duties was maintained in 2010 as well. This means that supervisors were indeed appointed in keeping with the obligations in the Environmental Enforcement Act, but that these supervisors did not perform any supervisory duties.

As stated earlier, it can generally be said that each municipality had on average more supervisors and that these supervisors also dedicated more FTEs to enforcement duties in 2010. However, this does not apply to all the categories of municipalities. Municipalities with 5,000 to 9,999 inhabitants and 15,000 to 19,999 inhabitants, for instance, had on average more supervisors at their disposal, but the number of FTEs supervisors dedicated to enforcement duties remained the same. Cities and municipalities with more than 30,000 inhabitants had on average more supervisors at their disposal. Moreover, more FTEs were dedicated to enforcement duties. Only the municipalities with 10,000 to 14,999 inhabitants, with 20,000 to 29,999 inhabitants and with 25,000 to 29,999 inhabitants indicated having on average fewer supervisors at their disposal per municipality, whereas more FTEs were dedicated to enforcement duties.

#### Reporting of municipal supervisors to the Environmental Licences Division of the Department of Environment, Nature and Energy

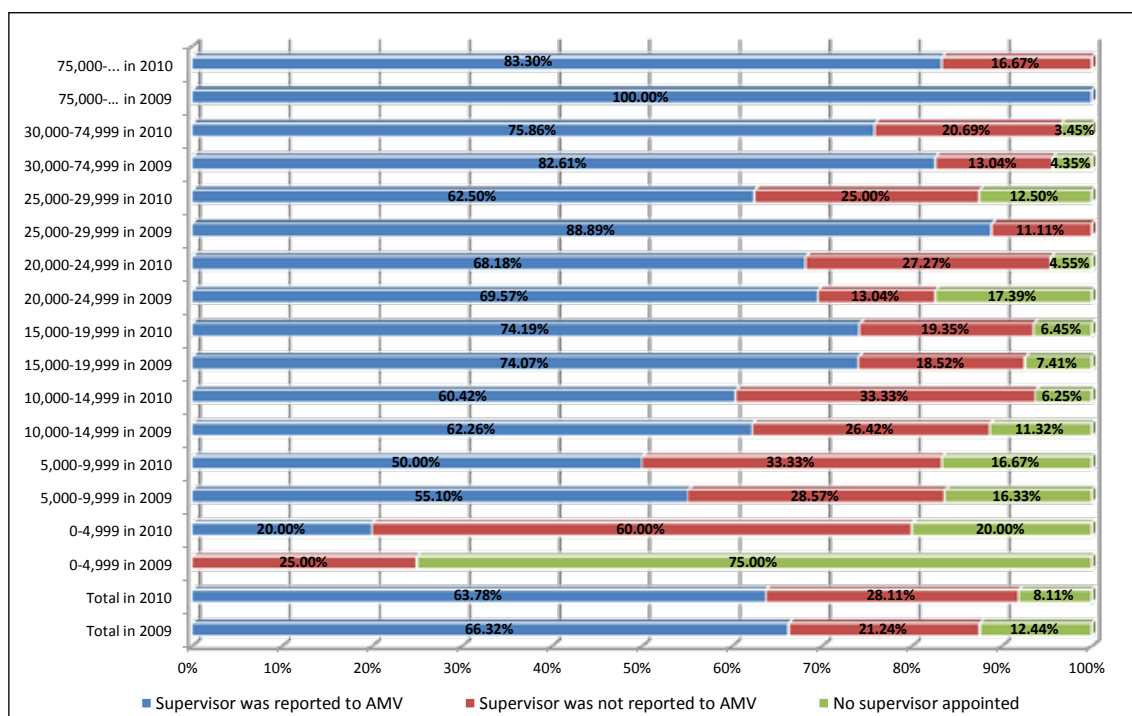
Mention was already made of municipalities that had appointed a supervisor and those that had not yet done so. This information is again included in the graph below for reference. In addition, for the municipalities that had appointed a supervisor the distinction is made between supervisors who have been reported to the Environmental Licences Division of the LNE Department and supervisors who have not yet been reported to this Division.

For non-regional supervisors, i.e. provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and police district supervisors, the coming into force of the Environmental Enforcement Act and its implementing orders means that:

- ▶ provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and police district supervisors are required to have a Certificate of Competence (Article 13 of the Flemish Government Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy);
- ▶ in order to obtain the Certificate of Competence, supervisors must take training as referred to in Article 13, second subparagraph, of the above-mentioned implementing order. However, the Minister may, based on demonstrated training or experience and following a request from the person in question stating reasons, grant a partial or complete exemption from theoretical and practical training. This exemption also refers to parts of the Competence Test for which an exemption from training has been granted. The training leading to a Certificate of Competence consists of:
  - ▶ theoretical training;
  - ▶ practical training;
  - ▶ a Competence Test about the theoretical and practical training;
- ▶ the training, as mentioned in Article 13, second subparagraph, may only be given by institutions that have been recognised for this purpose by the Minister, after advice stating reasons from the Environmental Licences Division of the LNE Department (Article 14 of the implementing order);

- ▶ in accordance with Article 15 of the Flemish Government Decree of 12 December 2008, the institution shall deliver a certificate to students who have attended the training mentioned in Article 13, second subparagraph, of this implementing order, and who have passed the Competence Test. This certificate must be presented to the Environmental Licences Division together with any granted exemptions from training and the appointment decision of the body mentioned in Article 16.3.1, §1, 2°, 3°, 4° and 5° of the Environmental Enforcement Act. Based on these documents, the Environmental Licences Division will then deliver a Certificate of Competence and proof of identity.

The graph below gives an overview of the number of municipalities that either reported or did not report their supervisors to the Environmental Licences Division of the Department of Environment, Nature and Energy for 2009 and 2010.



Graph 29 Appointment and reporting of municipal supervisors to AMV (according to population)

Compared to 2009, fewer municipalities reported their supervisor(s) to the Environmental Licences Division, namely 63.78% of the responding municipalities in 2010 and 66.32% of the responding municipalities in 2009. However, as indicated earlier, the number of municipalities that did not appoint a supervisor was lower in 2010. Only 8.11% of the responding municipalities reported not having a supervisor at their disposal for 2010, whereas in 2009 this number still amounted to 12.44% of the responding municipalities.

A remarkable fact is that in the category of municipalities with the largest number of inhabitants all the supervisors had been reported to the Environmental Licences Division in 2009, whereas only 83.33% of the responding municipalities indicated having reported their supervisors to the Environmental Licences Division in 2010. In the other category as well an increase can be observed in the percentage of responding municipalities that did not report their supervisors to the Environmental Licences Division in 2010. However, it must be said that these figures should be interpreted with some caution, since they are based on the communication from the municipalities on the reporting to the Environmental Licences Division, but this could not be verified with the Environmental Licences Division itself.

This could be proof of the fact that municipalities are still not sufficiently familiar with the procedures of the Environmental Enforcement Act. Within this framework some actions should be taken to devote sufficient attention to the importance of the timely and correct reporting of appointed supervisors.

#### Organisation of municipal supervision

Earlier in this chapter we have already referred to 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, which 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, i.e. 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 municipalities with more than three hundred Category 2 plants, according to Title I of Vlarem, 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.

In the graph below, it is indicated per category of municipalities how they implemented the duty of local supervisor in 2010: with their own personnel, or via an intermunicipal association or a police district.

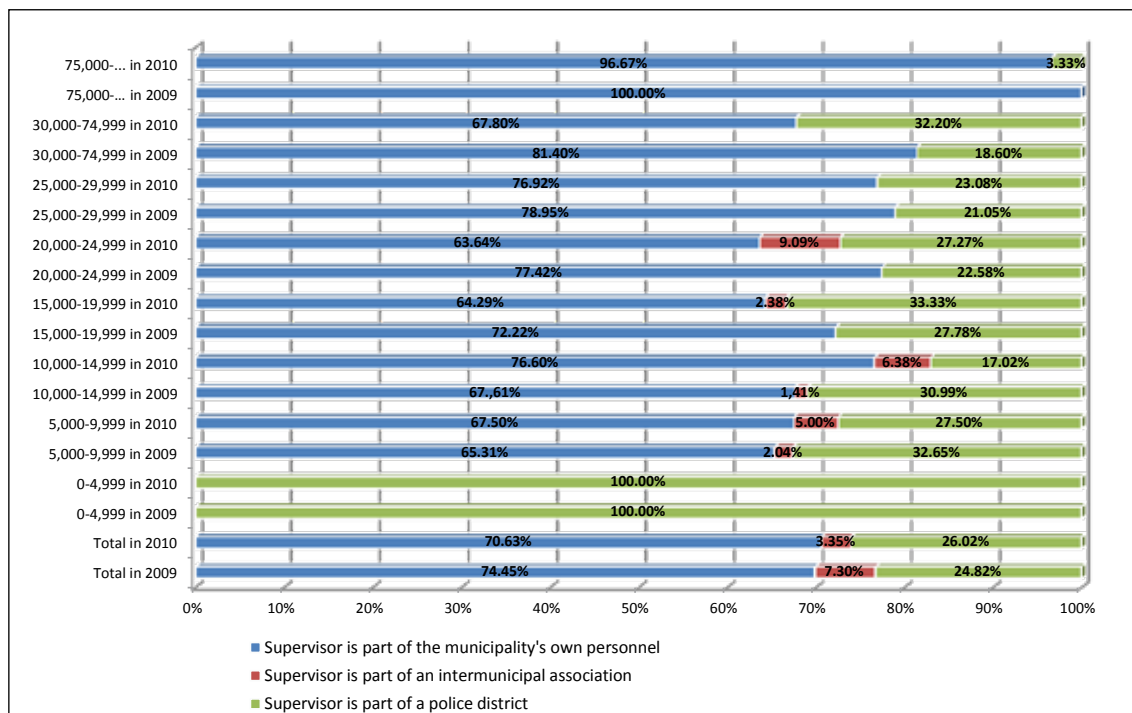
	Supervisor is part of the municipality's own personnel	Supervisor is part of an intermunicipal association	Supervisor is part of a police district
<b>Total</b>	190	9	70
<b>0-4,999</b>	0	0	5
<b>5,000-9,999</b>	27	2	11
<b>10,000-14,999</b>	36	3	8
<b>15,000-19,999</b>	27	1	14
<b>20,000-24,999</b>	21	3	9
<b>25,000-29,999</b>	10	0	3
<b>30,000-74,999</b>	40	0	19
<b>75,000-...</b>	29	0	1

*Table 35 Organisation of supervision in cities and municipalities (according to population) in 2009 and 2010*

The municipalities reported that, in 2010, out of the 269 appointed local supervisors, 190 supervisors belonged to their own personnel, 9 to an intermunicipal association and 70 to the police district. This shows that the municipalities mainly opted to appoint a supervisor within the municipality itself. In fact, more than 70% of the appointed supervisors belonged to the municipal personnel, whereas 26% of the appointed supervisors were appointed within a police district and only 3.35% within an intermunicipal association. On the basis of the data from the 2009 Environmental Enforcement Report it can be concluded that these respective ratios were as follows: 74.45% of the appointed supervisors belonged to the municipal personnel, whereas 24.82% of the total number of supervisors were appointed within a police district and 0.73% were appointed within an intermunicipal association. It can be derived from this that

the percentage of appointed supervisors was somewhat higher within the police districts and the inter-municipal associations.

The 2009 Environmental Enforcement Report revealed a clear trend in function of the size of the municipality, in the sense that the smaller municipalities more often used a supervisor appointed within the police district and less frequently used supervisors who belonged to their own personnel. The 2010 data provide a more diverse picture. This shows from the graph below:



Graph 30 Organisation of municipal supervision (according to population) in 2009 and 2010

In all the categories of municipalities the percentage share of supervisors appointed within the police districts rose, except in the rather small categories of municipalities with a population of 5,000 to 9,999 inhabitants and municipalities with a population of 10,000 to 14,999 inhabitants, mainly in favour of the percentage of supervisors appointed within an intermunicipal association. The municipalities of the smallest category with a maximum of 4,999 inhabitants fully continue to use police district supervisors. In 2009, the largest category of municipalities with more than 75,000 inhabitants made full use of supervisors appointed within their own personnel. In 2010, however, 1 supervisor was available who had been appointed within the police district.

Especially the smaller municipalities could be expected - despite the increase in the number of supervisors appointed within an intermunicipal association - to call on the services of intermunicipal associations even more frequently than is currently the case. Article 16.3.1, §1, 4° of the Environmental Enforcement Act indeed 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. Nevertheless, the VHRM could 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 when it comes to expertise and spatial 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 supervisor within an intermunicipal association can only increase the expertise and experience of this supervisor. Furthermore, it would be recommendable to appoint several supervisors within an intermunicipal association, because this way supervisors would not need to perform inspections in their own municipalities. The appointment of an intermunicipal supervisor could also lead to a separation of the duties of supervisors and advisers in the licensing procedure. It is frequently commented that in many cases the environment official (and hence the adviser) is currently often appointed as supervisor, and is therefore practically a party and a judge at the same time. However, intermunicipal cooperation is not a total solution suitable for all municipalities. For some municipalities other solutions must be looked for.

#### Environmental enforcement inspections carried out by municipal supervisors

In order to get an insight into the activities of the municipal enforcement actors in the field, the table below 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.

Number of inhabitants	Response	Number of appointed supervisors	Total amount of time dedicated to supervisory duties by supervisors in FTEs	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
0-4,999	5	5	0	3	0.60	0.00	0.00
5,000-9,999	36	40	3.80	195	4.88	0.10	51.31
10,000-14,999	48	47	13.16	657	13.98	0.28	49.92
15,000-19,999	31	42	8.70	342	8.14	0.21	39.31
20,000-24,999	22	33	2.90	566	17.15	0.09	195.17
25,000-29,999	8	13	4.10	83	6.38	0.32	20.24
30,000-74,999	29	59	11.76	1,051	17.81	0.20	89.37
75,000-...	6	30	19.75	2,752	91.73	0.66	139.34
Total	185	269	64.17	5,649	21.00	0.24	88.03

*Table 36 Efforts related to environmental enforcement duties by municipal supervisors (according to population)*

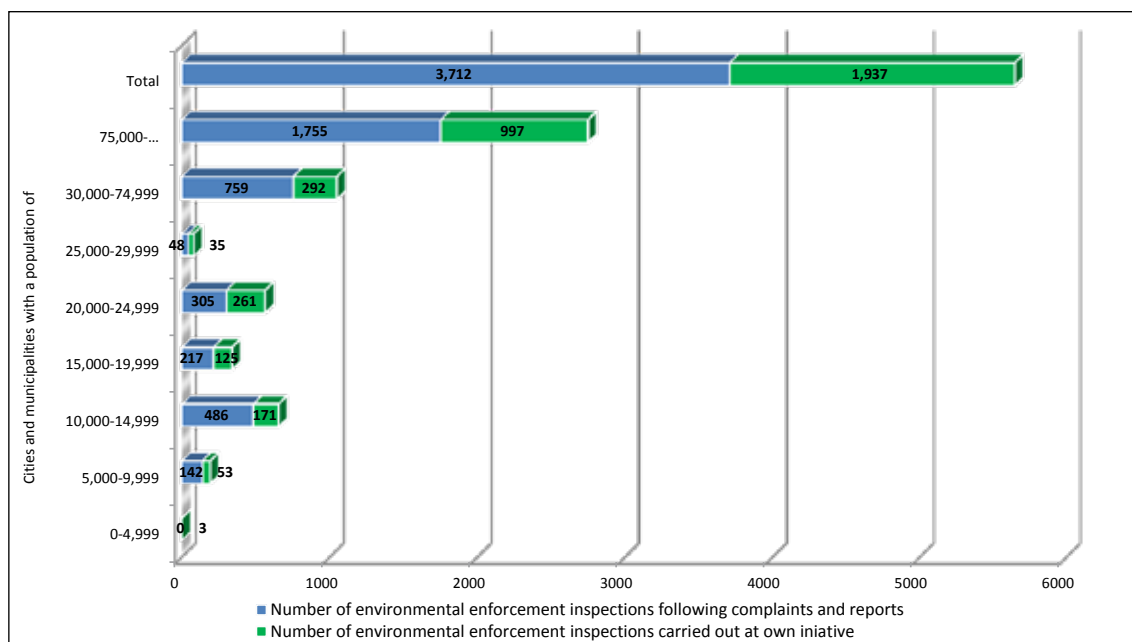
In 2010, the 269 appointed supervisors for the 185 responding municipalities jointly carried out 5,649 environmental enforcement inspections. This comes down to 21 environmental enforcement inspections per supervisor. When looking at the average number of environmental enforcement inspections per FTE, it can be concluded that these supervisors can perform an average of 88.03 inspections, if each supervisor would carry out supervisory duties on a full-time basis. However, the average time dedicated by the supervisors to supervisory duties is 0.24 FTEs. This means that on average the local supervisors dedicate only about 25% of their time to supervisory duties. These data would make it possible to argue in favour

of adjusting the Environmental Enforcement Act in the sense that instead of the number of supervisors per municipality the number of FTEs is laid down. If a municipality should have at least one full-time supervisor at its disposal, this supervisor should be able - on average and on the basis of the aforementioned figures - to perform 88.03 inspections per year. As will show from the graph below the inspections carried out by the local supervisors mainly concern environmental enforcement inspections following complaints and reports.

When considering the separate categories of municipalities, a highly varied picture can be observed of an average number of environmental enforcement inspections of 0.60 to a maximum average of 91.73 inspections per supervisor in 2010, an average amount of time dedicated of 0 FTEs to 0.66 FTEs and an average number of environmental enforcement inspections per FTE of 0.00 inspections to 139.34 inspections.

A remarkable fact is that the smallest cities ( $\leq 4,999$  inhabitants) reported a total number of performed inspections of 3, but without any amount of time having been dedicated to supervisory duties. As a result, the average number of environmental enforcement inspections per supervisor is 0.60 and the average number of environmental enforcement inspections per FTE is 0. In the other categories the average number of environmental enforcement inspections per FTE is always higher than the average number of inspections carried out per supervisor. This has to do with the fact that the appointed supervisors dedicated only a limited number of FTEs to supervisory duties. No relevant trend could be observed on the basis of the size of the municipality.

As opposed to the Environmental Enforcement Report 2009, the municipalities were asked for the Environmental Enforcement Report 2010 to indicate how many environmental enforcement inspections were carried out following complaints and reports, and how many environmental enforcement inspections were performed at own initiative. This is reflected in the graph and table below.



Graph 31 Number of environmental enforcement inspections carried out by municipal supervisors (according to population) within the framework of the Environmental Enforcement Act

Number of inhabitants	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
0-4,999	3	0	3
5,000-9,999	195	142	53
10,000-14,999	657	486	171
15,000-19,999	342	217	125
20,000-24,999	566	305	261
25,000-29,999	83	48	35
30,000-74,999	1,051	759	292
75,000-...	2,752	1,755	997
Total	5,649	3,712	1,937

*Table 37* Number of environmental enforcement inspections carried out by municipal supervisors (according to population) within the framework of the Environmental Enforcement Act

The majority of the environmental enforcement inspections performed by local supervisors were inspections following complaints and reports, namely 65.71% of the total number of performed inspections. However, this does mean that over 33% of the inspections were carried out at own initiative, the so-called proactive inspections.

A remarkable fact is that the supervisors in the smallest category of municipalities ( $\leq 4,900$  inhabitants) - who are all appointed within the police force - only carried out environmental enforcement inspections at their own initiative. In the other categories this is quite similar to the average number. However, the category of municipalities with a population of 20,000 to 24,999 inhabitants indicates that nearly half of the environmental enforcement inspections were carried out proactively. 63.64% of the appointed supervisors in this category were part of the municipality's own personnel, 27.27% of the police district and 9.09% of an intermunicipal association.

It can be concluded from this that the local supervisors not only perform environmental enforcement inspections following complaints and reports, but most certainly also plan and carry out proactive environmental enforcement inspections themselves. This can only be encouraged by the Flemish High Council of Environmental Enforcement.

In the tables and graphs below a comparison is made between the average number of environmental enforcement inspections per supervisor in 2009 and 2010, and between the average number of environmental enforcement inspections per FTE in 2009 and 2010.

Since the data from the Environmental Enforcement Report 2009 referred to the period from 1 May 2009 to 31 December 2009 the figures in both comparisons must also be reduced to a 12-month period.

Number of inhabitants	Average number of environmental enforcement inspections per supervisor in 2009	Average number of environmental enforcement inspections per supervisor in 2009 (reduced to 12 months)	Average number of environmental enforcement inspections per supervisor in 2010
0-4,999	0.00	0.00	0.60
5,000-9,999	5.37	8.06	4.88
10,000-14,999	9.93	14.89	13.98
15,000-19,999	11.53	17.29	8.14
20,000-24,999	9.84	14.76	17.15
25,000-29,999	10.84	16.26	6.38
30,000-74,999	19.14	28.71	17.81
75,000-...	120.33	180.49	91.73
Total	20.46	30.69	21.00

*Table 38 Average number of environmental enforcement inspections per municipal supervisor in 2009 and 2010*

The above table shows that the average number of environmental enforcement inspections per supervisor declined in total from 30.69 in 2009 to 21 in 2010. This may be explained by the fact that in 2009 relatively more inspections were carried out by a somewhat larger number of supervisors. When reducing the number of inspections to 12 months, a total of 8,408 inspections were carried out by a total of 274 local supervisors in 2009. In 2010, 5,649 inspections were performed by 269 local supervisors in total. Only two categories of municipalities reported an increase in the average number of inspections carried out by the supervisors, namely the smallest category of 0 to 4,999 inhabitants and the category of 20,000 to 29,999 inhabitants. For the smallest category this can be explained by the fact that the municipalities in this category indicated when the Environmental Enforcement Report 2009 was drawn up that no environmental enforcement inspections were carried out in 2009, whereas in 2010 three inspections were performed. A remarkable fact, however, is that the municipalities in this category indicated that in 2010 not one single FTE of the total of 5 supervisors who were appointed was dedicated to supervisory duties. In the category of municipalities with 20,000 to 24,999 inhabitants the average number of environmental enforcement inspections rose from 14.76 inspections per supervisor to 17.15 inspections per supervisor, despite the fact that the average number of supervisors per municipality decreased from 1.63 in 2009 to 1.57 in 2010. The increase in the average number of inspections per supervisor can therefore be explained by the sharp increase in the total number of performed environmental enforcement inspections in the municipalities of this category, namely from 305 in 2009 to 566 in 2010.

It is more accurate, however, to compare the average number of inspections per FTE in 2009 and in 2010, since the number of FTEs indicates how much time the appointed supervisors actually dedicated to environmental enforcement duties. Since these data from the Environmental Enforcement Report 2009 as well referred to the period from 1 May 2009 to 31 December 2009 the figures must also be reduced to a 12-month period.



Number of inhabitants	Average number of environmental enforcement inspections per FTE in 2009	Average number of inspections per FTE in 2009 (reduced to 12 months)	Average number of environmental enforcement inspections per FTE in 2010
0-4,999	0.00	0.00	0.00
5,000-9,999	54.23	81.35	51.32
10,000-14,999	50.43	75.65	49.92
15,000-19,999	53.69	80.54	39.31
20,000-24,999	113.81	170.72	195.17
25,000-29,999	76.87	115.31	20.24
30,000-74,999	101.60	152.40	89.37
75,000-...	240.67	361.01	139.34
Total	107.79	161.69	88.03

*Table 39 Average number of environmental enforcement inspections per FTE in 2009 and 2010*

The table above provides a similar picture. This comparison also reveals a decline in the activities and efforts of the supervisors in 2010, compared to 2009. In 2009, an average number of inspections per FTE of 161.69 were still recorded. In 2010, this number fell to 88.03 inspections per FTE. This decline is evident in all the categories of municipalities, with the exception of the category of municipalities with 20,000 to 24,999 inhabitants. Just like in the average number of inspections per supervisor, in this category as well there is a rise in the average number of inspections per FTE from 2009 to 2010.

It is remarkable, however, that - despite the decrease in the number of inspections per FTE - the average amount of time the supervisors dedicated to supervisory duties in FTEs rose in 2010 compared to 2009, namely from 0.19 FTEs to 0.24 FTEs. This means that the difference can be explained by the substantially larger number of inspections that were carried out in 2009. When reduced to 12 months, a total of 8,408 inspections were performed by the local supervisor in 2009. In 2010, this was 5,649 inspections. This means that, despite the increase in the average amount of time dedicated by the supervisors to supervisory duties, fewer inspections were carried out by the local supervisors in 2010. Naturally, the nature of the inspections plays a crucial role in the amount of time dedicated. A shift had possibly taken place from rather simple inspections in 2009 to more complex and time-consuming inspections by the local supervisors in 2010. However, we cannot make any statements on this on the basis of the figures.

## 2.4 Conclusion

In the foregoing section the central theme was the Flemish environmental enforcement policy in 2010. It has already been remarked that this title should be put in the right context. In this chapter, the VHRM has chosen to report on the supervisors of the different enforcement actors and the number of inspections that were carried out by those supervisors. To this end, the actors were asked, among other things, to indicate how many supervisors had been appointed within their organisation, how many FTEs were dedicated to enforcement duties and how many inspections were carried out by the supervisors. It concerned both regional and local supervisors. In addition, the environmental enforcement policy pursued by the federal and local police was discussed. Within the framework of the pursued local environmental enforcement policy not only the activities of the local supervisors were reported on, but also the implementation of competences by the provincial governors and mayors within the framework of taking administrative measures and safety measures and the supporting role of the provinces vis-à-vis the municipalities.

In order to carry out the above-mentioned evaluation the data relating to 2010 were used, and a comparison was made - whenever possible - between 2009 and 2010.

For the evaluation of the regional environmental enforcement policy it was indicated that the exact number of appointed supervisors who were made available (FTE) to perform environmental enforcement duties also differs greatly between the different actors in 2010. Some enforcement actors had a large number of supervisors at their disposal, whereas other actors had to perform their duties using a small number of supervisors. This may be explained by the fact that some enforcement actors have been assigned a great number of competences; in these cases the supervisors are almost full-time engaged in their supervisory duties; other actors only have to enforce a limited number of laws and Flemish Parliament Acts and as a result have to appoint fewer supervisors for this purpose, since enforcement is an additional task for them; in some cases a limited number of supervisors suffices to perform the limited number of duties. In addition it is also possible for an enforcement organisation 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. However, the question can be raised as to whether it is advisable to combine the function of supervisor with other functions, since the time some actors dedicate to enforcement duties turns out 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.

It is a positive evolution, however, that the number of available FTEs that is dedicated to environmental enforcement duties remained the same or even increased with most regional enforcement actors in 2010, compared to 2009. This can only benefit environmental law enforcement. With regard to the average number of environmental enforcement inspections that were carried out per supervisor, it can be concluded, however, that this number declined for a large number of regional enforcement actors in 2010, as opposed to 2009. A more specific calculation, namely the average number of inspections per FTE, produces the same result.

In the context of the evaluation of the environmental enforcement policy that was pursued by the police it could be observed that the police in the Flemish Region, and at the federal and local levels, drew up no less than 18,756 official reports on environmental offences in 2010. 97% of these reports were drawn up by local police forces. In addition, it could be indicated that, within the framework of environmental enforcement, the federal police carried out 1,352 proactive inspections which were mainly focused on waste shipments on the territory of the Flemish Region. During 61 inspections a breach was immediately identified and an official report drawn up. During 76 inspections a breach was identified a posteriori, after the information had been delivered to the competent administration. Although no supervisors can be formally appointed within the federal police, it turns out that, in 2010, 143 federal police officers belonged to the Environmental Network. Within the federal police force 49 FTEs were actively involved in environmental enforcement in the Flemish Region in 2010.

The Environmental Enforcement Act stipulates that local police personnel, on the other hand, can be appointed as supervisors. The different police districts in the Flemish Region were therefore asked to provide data on the number of supervisors in their police district, the number of FTEs dedicated to enforcement duties, the reporting of supervisors, the organisation of supervision within the local police force and the

number of inspections carried out by these police district supervisors. The VHRM received data from 94 of the 118 police districts in the Flemish Region. Compared to the data from the Environmental Enforcement Report 2009 it can be observed that more police districts had one or more supervisors at their disposal. In addition, the total number of appointed police district supervisors increased from 97 to 123. What is remarkable is the fact that the average amount of time each supervisor dedicated to supervisory duties declined in 2010. In the Environmental Enforcement Report 2009 the average amount of time each supervisor dedicated to supervisory duties was still 0.19 FTEs. In 2010, this was only 0.13 FTEs. There were thus more police districts that had a supervisor at their disposal. In 2010, more supervisors were available within these police districts, but these supervisors dedicated less time to environmental enforcement duties under the Environmental Enforcement Act. The fact that the local police supervisors dedicated on average very little time to the actual performance of supervisory duties raises the question whether or not some of these supervisors were only appointed for appearance's sake, without actually being engaged in environmental enforcement within the framework of the Environmental Enforcement Act.

The responding police districts indicated that they had carried out a total of 3,741 environmental enforcement inspections, 94% of which were performed following complaints and reports. These were performed by the 123 local police supervisors, which is an average of 30.41 environmental enforcement inspections per supervisor in 2010. Despite the fact that the local police supervisors dedicated only little time to environmental enforcement duties (on average 0.13 FTEs per supervisor), they perform a large number of inspections within the framework of the Environmental Enforcement Act. In addition, this is a large increase compared to 2009 when an average of 11.51 inspections were carried out per supervisor. However, a great difference exists between the various categories of police districts. Some police districts build a certain expertise and make some progress and can carry out more inspections in a smaller amount of time available. This trend cannot be observed within other police districts. Quite on the contrary. Especially the larger police districts could be expected to benefit from the increased scale and building of expertise. Yet, this does not show from the figures.

In order to assess the local environmental enforcement policy pursued, the enforcement activities of the provincial governors, the provincial supervisors, the mayors and the municipal supervisors were looked at.

In the Environmental Enforcement Act the provincial governors and mayors were given a very clearly defined competence, namely the imposition of administrative or safety measures in the framework of certain legislation. In 2010, a total of 4 petitions were filed with the provincial governors by third parties to impose administrative measures. The instrument 'requests/petitions for the imposition of administrative measures' addressed to the provincial governor is thus not frequently used. Despite the fact that 4 petitions for the imposition of administrative measures were filed with the provincial governors, only 1 administrative measure was imposed by a provincial governor in 2010. Another reason for the provincial governors making only very limited use of this competence may be the governors' lack of personnel, support or experience to actually implement the new competences within the framework of the Environmental Enforcement Act. The mayors from the responding municipalities, on the other hand, received 61 requests and 56 petitions for imposing administrative measures and actually imposed 128 measures in 2010. In general, it could thus be stated that this instrument has already been introduced in the environmental enforcement activities of the mayors in the Flemish Region.

None of the provincial governors received a request for the imposition of safety measures in 2010. It could also be concluded that none of the provincial governors themselves took the initiative to impose safety measures. The mayors of the Flemish cities and municipalities received a total of 22 requests for the imposition of safety measures. A total of 43 measures were imposed in 2010. This means that at least 21 safety measures were imposed by the mayors by virtue of their function and at their own initiative.

The Environmental Enforcement Act stipulates that personnel from the province may be appointed as supervisors by the Provincial Executive. However, in 2010 no provincial supervisors were appointed yet and therefore no inspections were carried out within the framework of the Environmental Enforcement Act. This is taken to be related to the fact that there is uncertainty concerning the training obligation and the exact duties of provincial supervisors. However, it should be noted that the provinces, in view of their responsibility as watercourse managers, have been performing supervisory duties for years with respect to legislation which was not included in Title XVI of the Environmental Enforcement Act, but for which provincial staff have been appointed per province to carry out these supervisory duties.

In addition, the provinces did offer support to municipalities in the area of environmental enforcement in the framework of the Cooperation Agreement 2008-2013. This support referred to aspects such as the organisation of training – long-term and ad hoc – and specific actions, such as a campaign on illegal dumping, support in technical-scientific, legal, policy or educational matters, and the setting up of platforms or consultations on environmental enforcement.

In order to obtain insight into the organisation of the supervisory duties of the municipal supervisors, it was asked to indicate, by analogy with the survey among regional enforcement actors, to give the number of appointed supervisors, the number of FTEs dedicated to enforcement duties, and the number of inspections performed. More than 60% of the Flemish municipalities sent a reply to the VHRM.

The municipalities were also asked to provide the number of licensed plants, falling into Categories 1, 2 and 3 according to Appendix I to Title I of Vlare, that were located on their territory, as well as an estimate of the number of unlicensed nuisance-causing plants. However, the figures show that 7.5% of the responding municipalities did not have this information. Still, this is a positive evolution compared to the data from the Environmental Enforcement Report 2009. In 2010, more municipalities had a better insight into the number of nuisance-causing plants on their territory. In order to draw up a sound inspection plan and to estimate and assess efforts in the area of environmental supervision, it continues to be crucial for the municipalities to have this information at their disposal. What is remarkable is that 65 of the 185 responding municipalities indicate that they estimate the total number of unlicensed plants at 2,223. This could indicate that these municipalities know about breaches of environmental legislation and are not taking any action (insofar as they have identified the unlicensed plants). Despite the fact that the total number of estimated unlicensed plants decreased from 4,056 in 2009 to 2,223 in 2010, the question can again be raised as to why these municipalities, and, in particular, their mayors, did not take appropriate enforcement action. As a recommendation to those municipalities, it could therefore again be proposed that priority be given in the municipal inspection plans to the monitoring of these unlicensed nuisance-causing plants.

From the figures on the appointment of municipal supervisors and the amount of time dedicated by them, it can be concluded that a total of 269 supervisors were appointed by the responding municipalities with a supervisor, with the time dedicated amounting to a total of 64.71 FTEs, which means an average of 1.62 supervisors per municipality and an average amount of time dedicated per supervisor of 0.24 FTEs. This is an improvement compared to the Environmental Enforcement Report 2009. Despite the fact that fewer municipalities sent a response for this environmental enforcement report and that the total number of appointed supervisors declined from 274 in 2009 to 269 in 2010, the total amount of time the supervisors dedicated to supervisory duties increased - and therefore also the average amount of time dedicated to supervisory duties per supervisor - from 52 FTEs in 2009 to 64.17 FTEs in 2010. 8.10% of the responding municipalities indicated not having appointed a supervisor yet. This is a decline compared to 2009 (12.44%). The municipalities were obliged to appoint a supervisor before 1 May 2010. However, the municipalities can also still call on the services of 'former' Vlare officials until 1 May 2012.

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

While in the previous chapter the individual enforcement actors and their efforts in the framework of the Environmental Enforcement Act were the main focus, 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 the 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.

The figures included in this chapter should also be treated with the necessary caution. The figures only refer to the calendar year 2010. Many enforcement actors still had to further (re)organise or reorient themselves in 2010 as a result of the new Environmental Enforcement Act, or wait for their supervisors to be appointed before they could start working. In many cases it will therefore only be possible to distinguish or confirm trends if they can also be observed in the next environmental enforcement reports. In contrast to the Environmental Enforcement Report 2009 the enforcement instruments in this report are compared each year to the number of performed enforcement inspections during which a breach was identified. In the Environmental Enforcement Report 2009 these were compared per actor to the total number of performed inspections. The advantage of a comparison to the number of inspections during which a breach was identified is that the use of instruments can be reflected when needed, with the exception of recommendations of course. 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 degree of compliance and the targeted enforcement by the actors. However, the disadvantage is that no comparisons can be made 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.

The different enforcement instruments are discussed in the chapter below.

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

In order to make a correct evaluation of the environmental enforcement instruments the right parameters must 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:	Number of inspections by supervisors	Number of 'inspections during which no breach was identified'	% share	Number of 'inspections during which a breach was identified'	% share
AMI	11,590	10,714	92.44%	876	7.56%
AMV	522 <sup>67</sup>	233	44.64%	289	55.36%
ALBON	298	158	53.02%	140	46.98%
VLM	3,076 <sup>68</sup>	1,863	60.57%	1,213	39.43%
VMM	5	0	0.00%	5	100.00%
AZ&G	866	380	43.88%	486	56.12%
ANB	7,233 <sup>69</sup>	5,957	82.36%	1,276	17.64%
OVAM	1,536 <sup>70</sup>	139	9.05%	1,397	90.95%
W&Z	0 <sup>71</sup>	0	0.00%	0	0.00%
AWV	Not available <sup>72</sup>	0	0.00%	0	0.00%
AMT	0 <sup>73</sup>	0	0.00%	0	0.00%
Nv De Scheepvaart	0 <sup>74</sup>	0	0.00%	0	0.00%
Provincial supervisors	0 <sup>75</sup>	0	0.00%	0	0.00%
Municipal supervisors	5,649	1,789	31.67%	3,860	68.33%
Local police supervisors	3,741	1,905	50.92%	1,836	49.08%
<b>Total</b>	<b>34,516</b>	<b>23,138</b>	<b>67.04%</b>	<b>11,378</b>	<b>32.96%</b>

*Table 40 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*

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. This graph makes it possible to compare the different actors in terms of the percentage of inspections with and without breach.

67 410 inspections of liquid and gaseous fuel engineers (309 inspections and 101 reinspections after inspections with an unacceptable measurement result); 12 inspections of laboratories (8 water + 4 air); 100 inspections of environmental coordinators (inspection of in-service training); numerous inspections of registration holders are carried out and at the same time advice is given; numbers are not registered

68 These are inspections within the framework of the Environmental Enforcement Act and the Flemish Parliament Act on manure.

69 The number of 7,233 inspections is an estimate of the total number of inspections that were carried out and is based on the number of official reports drawn up, the number of exhortations that were formulated and the number of inspections during which no breach was identified.

70 606 environmental enforcement inspections carried out in 2010 + support in 930 environmental enforcement inspections carried out in 2010

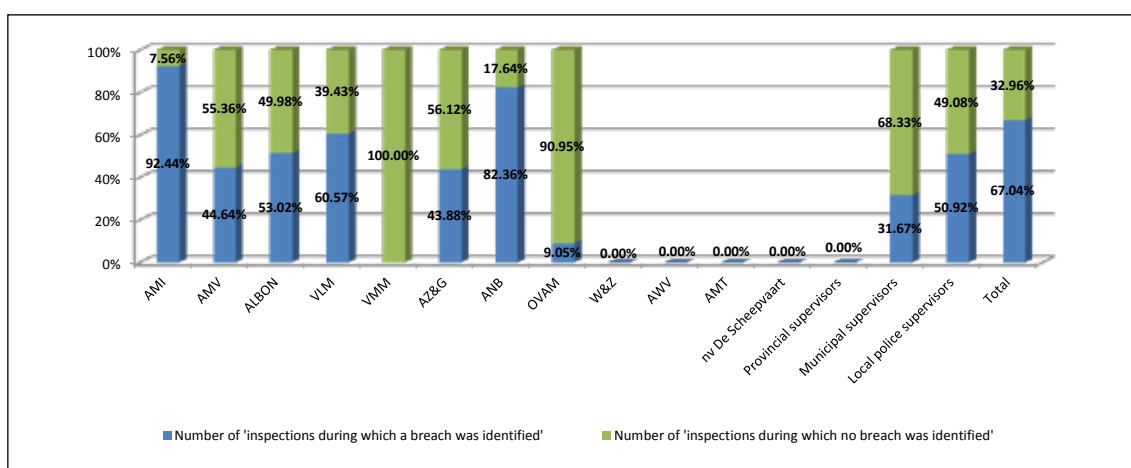
71 No specific action, is included in the daily inspection of/along waterways.

72 Total number of inspections unknown.

73 No supervisors appointed with AMT.

74 No supervisors appointed with nv De Scheepvaart.

75 No provincial supervisors.



Graph 32 Comparison between the 'total number of inspections' and the number of 'inspections during which a breach was identified'

It immediately shows from this graph that there is a difference between the different actors in terms of the share of inspections during which a breach was identified (and consequently also the inspections during which no breach was identified). However, this can also be expected, since the actors have different supervisory duties which each require a specific enforcement method.

A first remark to be made about the above figures is the 100% of inspections during which a breach was identified by the Flemish Environment Agency. This actor indicated having carried out 5 inspections during which a breach was also identified each time.

The Environmental Inspectorate Division and the Agency for Nature and Forests identified a breach in respectively 7.56% (876) and 17.64% (1,276) of the total number of inspections. With these figures the two actors indicate that a breach is identified in only a small share of the total number of inspections. It must also be mentioned that the Agency for Nature and Forests communicated that the total number of inspections during which a breach was identified is an estimate on the basis of the sum of the number of official reports drawn up and the number of formulated exhortations<sup>76</sup>, since the number of inspections that are carried out at own initiative during the daily supervision are not registered.

The Environmental Licences Division, ALBON, the Flemish Land Agency and the Agency for Care and Health carried out about an equal number of inspections during which a breach could be identified, as well as inspections during which no breach was identified. AMV carried out 522 inspections. It indicated having performed numerous inspections whilst at the same time having given advice (within the framework of licences), whose numbers were not registered. In 289 (55.36%) cases a breach was identified. The share of inspections during which a breach was identified by the actor ALBON was 46.98% (140). The VLM had a share of 39.43% (1,213) inspections during which a breach was identified. The actor made the additional comment that the total number of inspections included both the number of inspections that were carried out within the framework of the section of the Flemish Parliament Act on manure that is embedded in the Environmental Enforcement Act and the section that is not. The AZ&G performed 866 inspections during which 486 (56.21%) breaches were identified.

<sup>76</sup> Within the Agency for Nature and Forests the total number of performed inspections during which a breach was identified is calculated on the basis of the sum of the total number of official reports drawn up and the number of formulated exhortations, without there being any overlaps between the two. This means that when a breach was identified, either an exhortation was formulated or an official report was drawn up. These two instruments were never combined.

The Public Waste Agency of Flanders carried out the largest number of inspections during which a breach was identified. For the 2010 survey year this actor indicated having performed 1,536 inspections, providing support to 930 environmental enforcement inspections. Of the total number of inspections (1,536) that were performed, the number of inspections during which a breach was identified amounted to 1,397. As a result, the share of inspections during which a breach was identified is 90.95%, which makes that no breach was identified in only 9.05% of the total number of inspections.

The local police supervisors indicated that in the 2010 survey year 3,741 inspections were carried out. In 1 out of 2 (49.08%) inspections a breach was identified. For this actor it may be interesting to compare this figure with the number of environmental enforcement inspections that were carried out following a complaint (2.2.1.3 Evaluation of the environmental enforcement policy pursued by the local police). It shows from the survey that 3,525 (94.23% of the total number of performed inspections) inspections were carried out by local police supervisors following a complaint. The other (216) inspections were carried out at this actor's own initiative. It is impossible to determine during how many inspections 'following a complaint' a breach was actually identified. The municipal supervisors identified a breach in 68.33% (3,860) of the total number of inspections. Compared to the other actors, this is a rather high percentage.

A general conclusion that can be formulated is that a breach could be identified in only 32.96% of the total number of environmental enforcement inspections that were carried out by all the enforcement actors. Consequently, it could be established that in nearly 70% of the performed inspections the environmental legislation was complied with. This is a positive conclusion and indicates a high compliance rate in the Flemish Region.

As mentioned earlier, however, there is no 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 these figures is the number of inspections that were carried out following complaints and reports and the number of inspections performed at own initiative. 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 inspections themselves 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 the environmental legislation. During such inspections at own initiative exploratory inspections are also frequently organised. 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 breaches 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.

### **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 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 2010
AMI	11,590	0	0.00%
AMV	522	277	53.07%
ALBON	298	0	0.00%
VLM	3,076	665	21.62%
VMM	5	0	0.00%
AZ&G	866	0	0.00%
ANB	7,233	0	0.00%
OVAM	1,536	739	48.11%
W&Z	0	0	0.00%
AWV	Not available	0	0.00%
AMT	0	0	0.00%
Nv De Scheepvaart	0	0	0.00%
Provincial supervisors	0	0	0.00%
Municipal supervisors	5,649	1,678	29.70%
Local police supervisors	3,741	81	2.17%

Table 41 Number of 'inspections with unknown results' in 2010

The table will only be discussed with regard to 4 actors: the Environmental Licences Division (AMV), the Public Waste Agency of Flanders, the municipal supervisors and the local police supervisors. The reason for this is that an additional remark is to be formulated for each of these actors.

The AMV had 478 inspections. At the time of the survey, the results thereof were still unknown. In 2010, a total of 522 inspections were carried out by the AMV. In terms of percentage, there was an unknown result in 91.57% of the cases. The Environmental Licences Division gave a number of reasons for this rather high number. For instance, a lot of inspections of registration holders were carried out. At the same time advice was given. These numbers were not registered. Furthermore, an additional remark is to be made about the 478 inspections with unknown results. The AMV indicated that many inspections, and the subsequent measures, will be implemented in 2011. Therefore, the results were still unknown at the time of the survey.

The Public Waste Agency of Flanders indicated for 2010 that no results could be mentioned for 48.11% of the inspections. The Agency reported having performed a total of 1,536 inspections in 2010. 606 of these 1,536 inspections were carried out by the Public Waste Agency of Flanders itself, whereas this Agency provided support to other enforcement bodies during 930 environmental enforcement inspections. The Public Waste Agency of Flanders indicated that the final results were still unknown for at least 739 inspections on a total of 1,536 inspections in 2010. However, this actor made the additional remark that this figure pertains to inspections for which OVAM provided support. Consequently, it can be assumed that the results of the environmental enforcement inspections (during which OVAM merely provided support) were reported by the body that acted in an enforcing capacity.

In 2010, the municipal supervisors performed 5,649 inspections. The results for at least 1,678 of these inspections turned out to be unknown. This is 29.70% of the total number of inspections. It must be remarked that this high figure is mainly owing to the reporting by 2 municipalities. Together these two municipalities account for 1,229 inspections with unknown results. On the basis of the data in the table it can therefore most certainly not be stated that the municipalities have a general problem with registering

and/or implementing measures following an inspection, but that the ‘problem’ is situated very locally in two municipalities.

A similar remark can be made for the table for local police supervisors where the results were unknown for 2.17% of the total number of inspections. This is a lower number compared to the actors that were discussed earlier. This too can almost completely be attributed to two police districts. Together these two police districts carried out 70 inspections with unknown results on a total of 81 performed inspections.

It can be concluded from these data that some actors should make use of better notification, on the one hand within the framework of support and cooperation and on the other hand in the context of monitoring. In order to draw up the environmental enforcement report in an efficient way, it is important to use complete information as often as possible. Each inspection with unknown results also implies that only an incomplete evaluation can be made for the relevant actor and the whole set of instruments.

### 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 legislation were identified, but 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’ for the enforcement actor. 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 2010
AMI	876	0	0.00%
AMV	289	0	0.00%
ALBON	140	0	0.00%
VLM	1,213	0	0.00%
VMM	5	2	40.00%
AZ&G	486	0	0.00%
ANB	1,276	0	0.00%
OVAM	1,397	2	0.14%
W&Z	0	0	0.00%
AWV	Not available	0	0.00%
AMT	0	0	0.00%
Nv De Scheepvaart	0	0	0.00%
Provincial supervisors	0	0	0.00%
Municipal supervisors	3,860	153	3.96%
Local police supervisors	1,836	764	41.61%

Table 42 *Number of ‘inspections without further action’ in 2010 compared to the number of ‘inspections during which a breach was identified’*

However, remarks need to be added to the figures in this table which may put certain results into perspective.

The Environmental Inspection Division took action following each of its inspections. The Land and Soil Protection, Subsoil and Natural Resources Division also took action following each of the 140 inspections during which a breach was identified. The Flemish Land Agency also took further action after each inspection during which a breach was identified.

The Agency for Care & Health and the Agency for Nature and Forests identified a breach during respectively 486 and 1,276 inspections, which were also always followed by further action. Waterwegen & Zeekanaal nv did not perform any specific inspections in 2010. However, it indicated that daily inspections were carried out in the areas for which it is competent, but that these are not registered. In 2010, the Maritime Access Division, nv De Scheepvaart and the provincial supervisors did not perform any inspections. The reason for this is that no supervisors had been appointed yet for these three actors.

The Flemish Environment Agency carried out 5 inspections, 2 of which remained without further action. However, due to this low number of inspections the share of 'inspections without further action' had a great impact (40%) in 2010. The Public Waste Agency of Flanders indicated having carried out 1,397 inspections in 2010 during which a breach was identified. No further action was taken following only 2 (0.14%) of these 1,397 inspections. In 2010, the municipal supervisors identified breaches during 3,860 inspections. However, no further action was taken following 153 inspections, which is a share of 3.96%. The survey of the local police supervisors revealed that no further action was linked to 764 (41.61%) of the 1,836 inspections during which a breach was identified.

For certain actors the above-mentioned numbers are rather high. However, 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 taking further action once an offence has been identified is therefore contrary to the above-mentioned legal provision. There is however an area of tension between the legal requirements and practice. The question arises whether this practice is still acceptable, especially seeing as the Environmental Enforcement Act makes a whole range of instruments available. This fact will be further examined by the Flemish High Council of Environmental Enforcement. Still, it is remarkable that the local police supervisors identified an environmental infringement or environmental offence during more than 40% of the inspections they carried out, without taking any further action. Especially with regard to the identified environmental offences local police supervisors could be expected to draw up an official report, since this is a familiar instrument used by the local police.

### **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'*.

The VHRM questioned the enforcement actors on the use of the preventive instrument 'recommendation', as defined above. Based on the response obtained, it is impossible to know whether this definition has been interpreted in the same way by all individual enforcement actors. In view of the coming survey a VHRM glossary was therefore developed in which several enforcement terms, including 'recommendation', are formulated.

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.

Enforcement actor:	Number of 'inspections during which no breach was identified'	Number of 'recommendations' by supervisors	% share in 2010
AMI	10,714	85	0.79%
AMV	233	0	0.00%
ALBON	158	108	68.35%
VLM	1,863	6	0.32%
VMM	0	2	0.00%
AZ&G	380	395	103.95%
ANB	5,957	0	0.00%
OVAM	139	66	47.48%
W&Z	0	0	0.00%
AWV	0	0	0.00%
AMT	Not available	0	0.00%
Nv De Scheepvaart	0	0	0.00%
Provincial supervisors	0	0	0.00%
Municipal supervisors	1,789	897	50.14%
Local police supervisors	1,905	165	8.66%

Table 43 Number of 'recommendations' by supervisors in 2010 compared to the number of 'inspections during which a breach was identified'

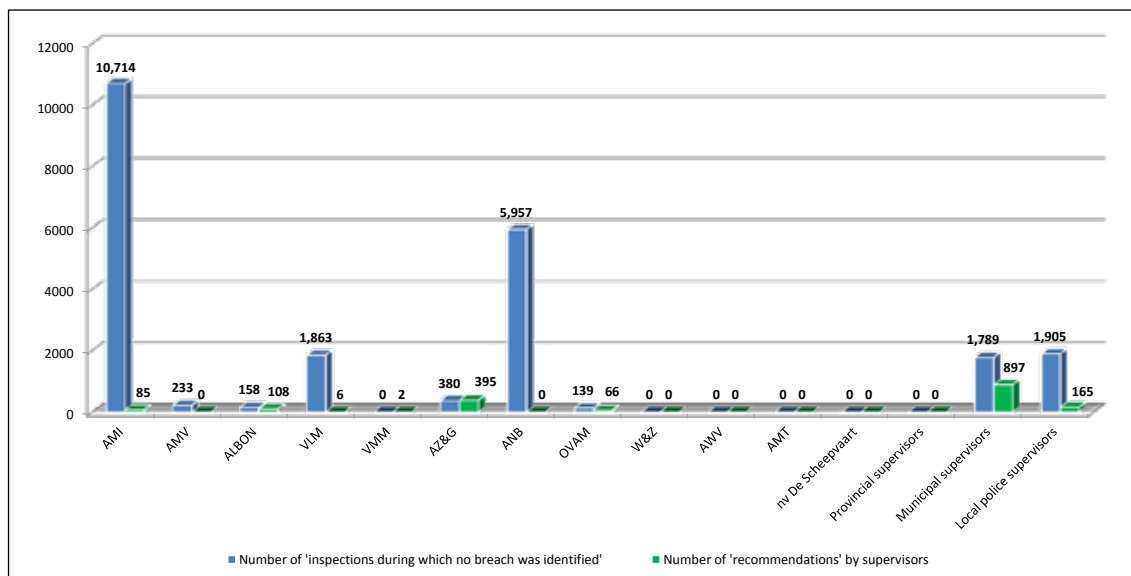
As can be derived from the table above, the instrument 'recommendation' is not equally well-known or applied by the actors. The Environmental Inspectorate Division, for instance, used the instrument 85 times. In terms of percentage the instrument 'recommendation' is applied in 0.79% of the inspections during which no breach was identified.

The Flemish Land Agency used the instrument only 6 times. Given the high number of inspections during which no breach was identified and for which a recommendation could be given, this is a relatively low number of 'recommendations'. It must be remarked about the figures of the Flemish Environment Agency that, as indicated in the survey, only inspections took place during which a breach was identified. Still, the VMM used the instrument 'recommendation' twice in 2010. This is in contravention of Article 16.3.22 of DABM which stipulates that a 'recommendation' only applies when an environmental infringement or environmental offence *threatens* to occur.

The Land and Soil Protection, Subsoil and Natural Resources Division, the Agency for Care and Health, the Public Waste Agency of Flanders, the municipal supervisors and the local police supervisors all used the instrument 'recommendation'. The Land and Soil Protection, Subsoil and Natural Resources Division used the instrument 'recommendation' in 68.35% of the inspections during which no breach was identified. This indicates that for this actor the instrument seems to be useful to meet the environmental enforcement objectives. For the AZ&G the number of recommendations amounted to 103.95% of the total number of inspections during which no breach could be identified. The high application rate of the instrument 'recommendation' by this actor shows that several recommendations were made during one and the same inspection. However, as indicated earlier, it is impossible to say with 100% certainty that all

the enforcement actors only use the instrument 'recommendation' when there is a risk of a breach. OVAM used the instrument 'recommendation' 66 (47.48%) times on a total of 139 inspections during which no breach was identified.

The municipal supervisors and local police supervisors indicated that a recommendation was formulated respectively 897 and 165 times. The local police supervisors had a share of 8.66% recommendations. The municipal supervisors formulated a 'recommendation' for about 1 out of 2 (50.14%) inspections during which no breach was identified. This is a substantial number, which could indicate that this instrument is well-known among municipal supervisors.



Graph 33 Share of the use of the instrument 'recommendation' in 2010

Actors that did not make use of the instrument were ANB, AWV, W&Z, AMT, nv De Scheepvaart and the provincial supervisors. For the latter four no supervisors had been appointed yet in the survey year 2010 and therefore no inspections took place.

It can be clearly observed that the instrument 'recommendation' is important for some actors. It is difficult to formulate a general conclusion on this instrument, since the application of each instrument depends on the different actors. It can carefully be stated that the instrument 'recommendation' is useful for a number of actors to meet the set environmental enforcement target. In addition, a recommendation can only be formulated when there is a risk of an offence or infringement.

### 3.5 Evaluation of the instrument 'exhortation'

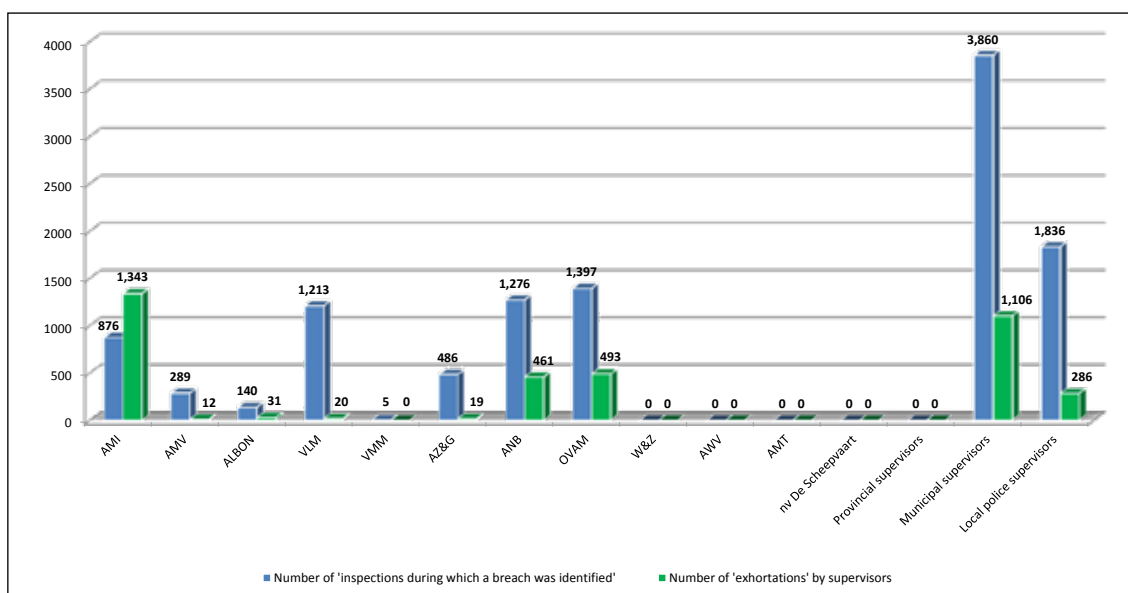
For the instrument 'exhortation' a clear definition can be found in DABM as well. Subsection IV, Article 16.3.27 states: 'When supervisors, during the performance of their supervisory duties, identify an environmental infringement or an environmental offence, they may exhort the suspected offender and 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 2010.

Enforcement actor:	Number of 'inspections during which a breach was identified'	Number of 'exhortations' by supervisors	% share in 2010
AMI	876	1,343	153.31%
AMV	289	12 <sup>77</sup>	4.15%
ALBON	140	31	22.14%
VLM	1,213 <sup>78</sup>	20	1.65%
VMM	5	0	0.00%
AZ&G	486	19	3.91%
ANB	1,276	461	36.13%
OVAM	1,397	493	35.29%
W&Z	0 <sup>79</sup>	0	0.00%
AWV	Not available <sup>80</sup>	0	0.00%
AMT	0 <sup>81</sup>	0	0.00%
Nv De Scheepvaart	0 <sup>82</sup>	0	0.00%
Provincial supervisors	0 <sup>83</sup>	0	0.00%
Municipal supervisors	3,860	1,106	28.65%
Local police supervisors	1,836	286	15.58%

Table 44 Number of 'recommendations' by supervisors in 2010 compared to the number of 'inspections during which a breach was identified'

It can be remarked about the above table that the 'exhortation' seems to be a well-known instrument among the different enforcement actors. All enforcement actors, with the exception of the VMM, where a supervisor was appointed in 2010 used the instrument 'exhortation'. The Environmental Inspectorate Division and the Agency for Nature and Forests both had the largest share of 'exhortations'.



Graph 34 Share of the use of the instrument 'exhortation' in 2010

- 77 Burner engineers: actions on the basis of 2010 inspections still to be carried out in 2011 - Environmental coordinators: actions on the basis of 2010 inspections still to be carried out in 2011 - 12 laboratories (corrective actions)
- 78 These are inspections within the framework of the Environmental Enforcement Act and the Flemish Parliament Act on manure.
- 79 No specific action, is included in the daily inspection of/along waterways.
- 80 Total number of inspections unknown.
- 81 No supervisors appointed with AMT.
- 82 No supervisors appointed with nv De Scheepvaart.
- 83 No provincial supervisors.

The first remarkable fact about the above graph is that, despite the number of inspections during which a breach was identified, some actors made a lot of use of this instrument. The actors AMI and ANB had a great share, respectively 153.31% and 36.13% of the instrument 'exhortation', compared to the other actors. As indicated earlier, an exhortation can only be formulated when a breach was identified. The high percentage of exhortations with AMI should therefore imply that during an inspection several breaches were identified, as a result of which an official report had to be drawn up or an identification report could be made. The AMI formulated 1,343 exhortations, but drew up one identification report and only 500 official reports. This would mean that the other exhortations pertained to identified environmental infringements or that several exhortations were formulated for one or more environmental offences that were laid down in one single official report.

The ANB, on the other hand, formulated 461 exhortations. The number of inspections during which a breach could be identified was calculated by the ANB by adding the number of exhortations to the number of official reports. However, it was communicated by the ANB that for one and the same inspection during which a breach was identified either an exhortation was formulated or an official report was drawn up, and never a combination of both.

In the 2010 survey the ALBON, OVAM, municipal supervisors and local police supervisors indicated having used the instrument 'exhortation'. The share of 'exhortations' on the total number of inspections during which a breach was identified is lower than that of the actors ANB and AMI. Despite this fact, however, the absolute numbers of the use of the instrument 'exhortation' are not to be neglected. ALBON used an 'exhortation' 31 times compared to 140 inspections during which a breach was identified, which represents a share of 22.14%. Another actor that reported a frequent use of the instrument 'exhortation' was OVAM. The instrument 'exhortation' was used in 35.29% of the inspections during which a breach was identified. Although this percentage is lower compared to other actors, it represents 493 exhortations. Second to the AMI, the municipal supervisors made the most frequent use of the exhortation. This actor used the instrument 1,106 times for 3,860 inspections during which a breach was identified. This is a share of 28.65%. The local police supervisors used the instrument 'exhortation' less than the aforementioned actors. For the 1,836 identified breaches 286 exhortations were formulated, which represents a share of 15.58%. One of the reasons for the less frequent use of the instrument 'exhortation' may be the fact that more use was made of the instruments which this actor is more familiar with, such as the official report.

For some actors it can be stated that the instrument 'exhortation' was less necessary to fulfil their supervisory duties. In the 2010 survey, the AMV reported having used the instrument 'exhortation' 12 times. In 2010, this actor identified a breach during 289 inspections, as a result of which the share of the instrument 'exhortation' is 4.15%. In 3.91% of all the inspections during which a breach was identified the AZ&G formulated an exhortation. This could be explained by the fact that this actor prefers not to give too many sanctions but to use the instrument 'recommendation', as discussed earlier. The instrument 'exhortation' was the least used by the VLM. The VLM drew up an exhortation for 20 inspections during which a breach was identified. Since a breach was identified during 1,213 inspections in total, the share of the instrument 'exhortation' is only 1.65%.

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, a remark must be made about the number of times the instrument 'exhortation' was used and the number of official reports that were drawn up. In the Environmental Enforcement Report 2009 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 must be at least as high as the number of exhortations. When running ahead to 3.7 'Evalu-

ation of the instrument 'official report', it can be stated that this is most certainly not the case for certain actors. As indicated earlier, the AMI formulated 1,343 exhortations and drew up only 500 official reports. Even AMV, ALBON, AZ&G, OVAM and the municipal supervisors drew up fewer official 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. However, it is also possible that an exhortation is formulated with respect to an environmental infringement. Yet, the next chapter 3.7 'Evaluation of the instrument 'identification report' shows that the AMI drew up one identification report in 2010. OVAM and the municipal supervisors drew up respectively 28 and 21 identification reports, whereas ALBON, AMV and AZ&G did not draw up any reports. It is possible, however, that an exhortation was formulated for an environmental infringement, but that no identification report was made. The supervisors can indeed draw up an identification report when an environmental infringement is identified, but they are not obliged to do so. There may, however, still be an area of tension between Art. 29 of the Code of Criminal Procedure and the enforcement practice. The VHRM will continue to examine this problem in order to find a pragmatic solution.

### **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 breaches of environmental regulations with a limited effect on the environment, according to six cumulative criteria to be met by such breaches. This resulted in a list, included in the Decree of 12 December 2008 as 12 appendices, of behaviour that qualifies as an environmental infringement. 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 a discretionary power in this respect and can therefore judge themselves whether its use is appropriate.

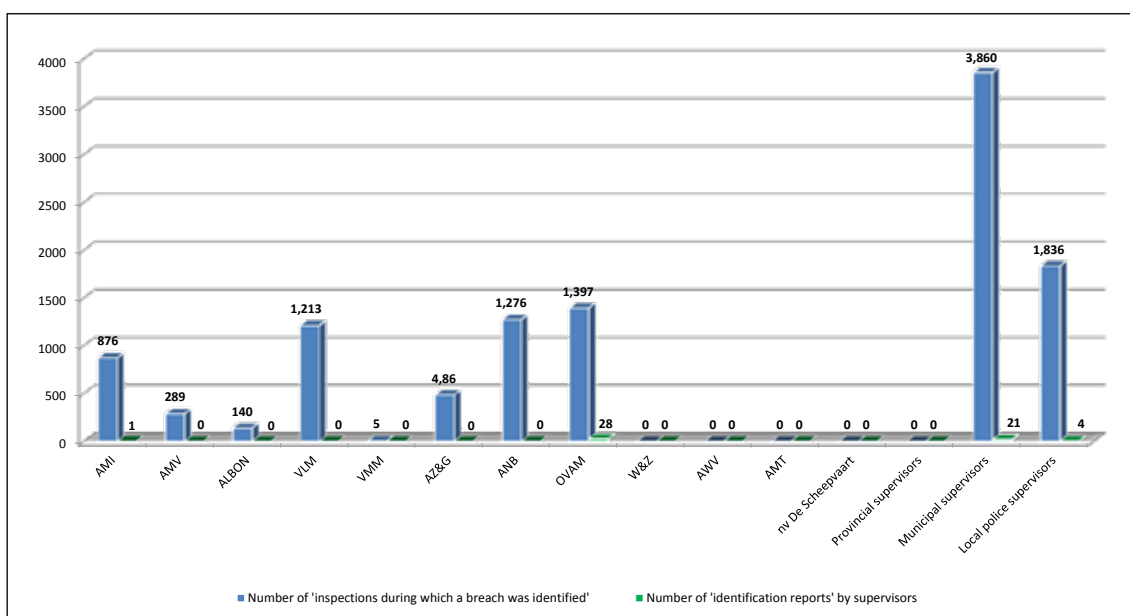
The table and graph below provide an overview of identification reports drawn up by the individual enforcement actors compared to the number of inspections during which a breach was identified. It must be remarked that the 'identification report' is an instrument which is used by the supervisors when an environmental infringement is identified. The figure with which the instrument is compared 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 2010
AMI	876	1	0.11%
AMV	289	0	0.00%
ALBON	140	0	0.00%
VLM	1,213	0	0.00%
VMM	5	0	0.00%
AZ&G	486	0	0.00%
ANB	1,276	0	0.00%
OVAM	1,397	28	2.00%
W&Z	0	0	0.00%
AWV	Not available	0	0.00%
AMT	0	0	0.00%
Nv De Scheepvaart	0	0	0.00%
Provincial supervisors	0	0	0.00%
Municipal supervisors	3,860	21	0.54%
Local police supervisors	1,836	4	0.22%

Table 45 Number of 'identification reports' by supervisors in 2010 compared to the number of 'inspections during which a breach was identified'

It showed clearly from the Environmental Enforcement Report 2009 that this new instrument was not yet fully embedded in the standard work method of the different actors in 2009. One year later, in the 2010 survey year, the above table reveals that the different actors are still not very familiar with the application of the instrument 'identification report'.



Graph 35 Share of the use of the instrument 'identification report' in 2010

One possible explanation for the less frequent use of the instrument 'identification report' may be that in 2010 the various actors used a different definition for 'identification report'. It was already remarked in the Environmental Enforcement Report 2009 that the municipal supervisors applied a definition which differs from the definition in DABM. The VHRM anticipated this by mentioning in the survey for this Environmental Enforcement Report that when asked about the number of identification reports drawn up that was 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 referred to 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. This 'redefinition' may have contributed to the lower registration in 2010 of the number of identification reports. However, this provides an accurate picture of the actual use of this instrument, as defined in DABM. Just like in the survey year 2009 there is also a certain discrepancy in the survey year 2010 between the number of given identification reports on the one hand and the number of identification reports that were reported 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 21 reports on the use of this instrument by municipal supervisors.

The instrument 'identification report' was not frequently used by local police supervisors either. This actor indicated having drawn up 4 identification reports on a total of 1,836 inspections during which a breach was identified. This is a share of 0.22%. In the survey year 2009, in which the use of the instrument was compared to the total number of inspections, the share of identification reports was still 4.48%. Although a comparison with 2009 is not allowed, a falling trend can clearly be established.

OVAM had the largest share of identification reports. For 1,397 inspections during which a breach was identified 28 identification reports were drawn up. Although this is only 2%, this is still the actor who most frequently used this instrument. The municipal supervisors and the local police supervisors also used the identification report. The municipal supervisors drew up 21 identification reports, which is a share of 0.54% on a total of 3,860 inspections during which a breach was identified. The instrument 'identification report' was less frequently applied by the local police supervisors where it represents a share of 0.22%.

The instrument 'identification report' is not so often used by the Flemish Land Agency and the Agency for Nature and Forests. In the exhaustive list of appendices to the Decree of 12 December 2008 no environmental infringements relating to the Flemish Parliament Act on manure were included, on the one hand, and hardly any offences against the nature protection legislation, on the other, which is why no identification reports could be drawn up with regard to these matters.

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 to give a picture of the number of environmental infringements that were identified, 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 examine this, among other things within the framework of the evaluation of the Environmental Enforcement Act.

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

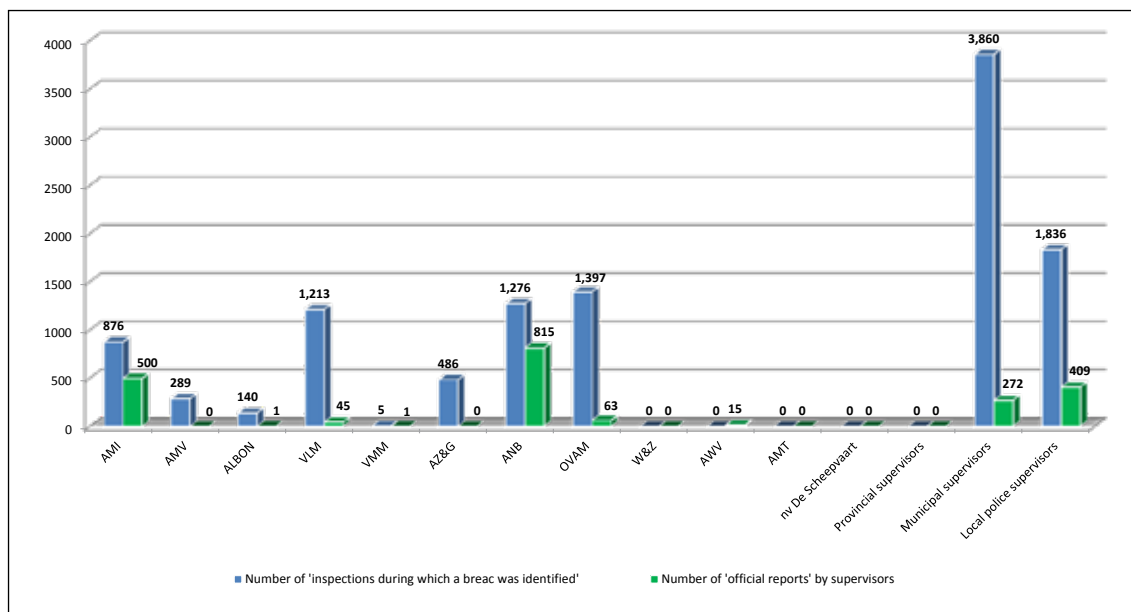
While environmental infringements can be identified via an identification report, supervisors have to use official reports to report environmental offences to the public prosecutor's office. The table and graph below provide an overview of the initial official reports drawn up per enforcement actor with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

Once again 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 provide 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 involve either environmental offences or environmental infringements.

Enforcement actor:	Number of 'inspections during which a breach was identified'	Number of 'official reports' by supervisors	% share in 2010
AMI	876	500	57.08%
AMV	289	0	0.00%
ALBON	140	1	0.71%
VLM	1,213	45	3.71%
VMM	5	1	20.00%
AZ&G	486	0	0.00%
ANB	1,276	815	63.87%
OVAM	1,397	63	4.51%
W&Z	0	0	0.00%
AWV	Not available	15	0.00%
AMT	0	0	0.00%
Nv De Scheepvaart	0	0	0.00%
Provincial supervisors	0	0	0.00%
Municipal supervisors	3,860	272	7.05%
Local police supervisors	1,836	409	21.95%

Table 46 Share of the use of the instrument 'official report' by supervisors in 2010

A note must be made about the ANB. For this actor there was a difference in the number of cases registered by the criminal divisions of the public prosecutor's offices (see 'Evaluation of the criminal sanctions policy' in Chapter 4) and the number of official reports drawn up that was given by the ANB. This can be explained by the fact that some official reports drawn up by the actor concerned were dealt with by the police prosecutors. An additional element may also be that some of the official reports drawn up by the ANB were wrongfully registered under animal welfare, as a result of which they did not fall within the scope of the Environmental Enforcement Act.



Graph 36 Share of the use of the instrument 'official report' in 2010

The actors AMT<sup>84</sup>, nv De Scheepvaart and the provincial supervisors indicated that no supervisors were appointed in 2010. As a result, these actors could not draw up any official reports. Waterwegen & Zee-kanaal nv did not take any specific action, but reported that inspections were carried out on a daily basis for matters for which they are competent. However, apparently no official reports were drawn up during these inspections within the framework of the Environmental Enforcement Act.

When looking at possible rising or falling trends in the use of the instrument 'official report', a striking figure is revealed for the local police supervisors. In the 2010 survey year 3,741 inspections were carried out. During 1,836 of these inspections a breach was identified and for 409 (21.95%) of them an official report was drawn up. For the 2009 survey year the local police supervisors carried out 1,116 inspections (this is the total number of inspections), for which 548 official reports were drawn up. As indicated earlier, it is impossible to compare the absolute figures with each other, since a different method for evaluating and comparing figures is used in this report. Still, it is peculiar that more official reports were drawn up during 1,116 inspections, which also include the inspections during which no breach was identified. It would rather be expected that the official report is a familiar instrument for the local police. Despite this strong decline, this continues to be the most frequently applied instrument by local police supervisors.

A similar application frequency of this instrument was registered by the actors VLM and OVAM. The share of inspections during which a breach was identified and for which an official report was drawn up amounted respectively to only 3.71% and 4.51% in 2010. However, an additional remark is to be made with regard to these two actors. It shows from the OVAM survey that 1,397 inspections took place during which a breach was identified. When looking at the figures of this actor, it turns out that relatively little use was made of the instruments discussed earlier. This may be explained by the rather high number (739) of inspections with unknown results. This may have contributed to the fact that the number of given instruments, and consequently also the use of the official report, represents a low share compared to the high number of inspections during which a breach was identified. The VLM registered inspections within the framework of both the Environmental Enforcement Act and the Flemish Parliament Act on manure, but only indicated in the survey the number of official reports that come specifically under the Environmental

84 Afdeling Maritieme Toegang van het departement Mobiliteit en Openbare Werken (Division of Maritime Access of the Department of Mobility and Public Works).

Enforcement Act. As a result of this the impression may arise that the official report is hardly of any relevance for the VLM.

The municipal supervisors drew up 272 official reports. In comparison with the other actors, this is quite a high number of official reports. When considering the share (7.05%) of the instrument discussed here - with respect to the total number of inspections during which a breach was identified - it seems appropriate, however, to put this into perspective and it can be concluded that the official report was rather rarely drawn up by the municipal supervisors.

The actors AMI and ANB had drawn up the largest number of official reports. The actor AMI used the official report 500 times for 876 inspections during which a breach was identified. This means that an official report was drawn up in more than one out of two (57.08%) inspections during which a breach was identified. The instrument 'official report' was most frequently used by the actor ANB which drew up 815 official reports for 1,276 inspections during which a breach was identified.

AZ&G, ALBON and AMV made little or no use at all of the instrument 'official report'. These actors seemed to make more use of 'softer' instruments, such as the 'recommendation' and the 'exhortation'. VMM drew up only one official report on a total of 5 inspections. This gives the impression that frequent use was made of the instrument 'official report', namely in 20% of the total number of inspections that were carried out.

### **3.8 Evaluation of the instrument 'administrative measure' and 'appeals against orders containing administrative measures'**

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

For the purposes of the present environmental enforcement report it was decided to regard 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 under Chapter 4.2. However, this choice was made in order to be able to refer to the use of the entire set of enforcement instruments available to supervisors in the field in the conclusion of this chapter.

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

According to Article 16.4.7 of DABM administrative measures can take the form of:

- ▶ an order to the suspected offender to take the necessary 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 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 2010
AMI	876	58	6.62%
AMV	289	0	0.00%
ALBON	140	0	0.00%
VLM	1,213	15	1.24%
VMM	5	0	0.00%
AZ&G	486	55	11.32%
ANB	1,276	90	7.05%
OVAM	1,397	5	0.36%
W&Z	0	0	0.00%
AWV	Not available	0	0.00%
AMT	0	0	0.00%
Nv De Scheepvaart	0	0	0.00%
Provincial supervisors	0	0	0.00%
Municipal supervisors	3,860	164	4.25%
Local police supervisors	1,836	270	14.71%

Table 47 Share of the number of imposed administrative measures in relation to the number of 'inspections during which a breach was identified'

The figures show that all the actors (with the exception of VMM, 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 VLM and OVAM. VLM used the instrument 'administrative measure' 5 times for 1,213 inspections during which a breach was identified. As a result, the share of the administrative measure for the aforementioned 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 0.36% of the inspections during which a breach was identified. This comes down to 15 administrative measures.

For AMI and the municipal supervisors a fairly equal share of the use of the instrument 'administrative measure' could be registered. AMI imposed an administrative measure during 58 inspections during which a breach was identified, which represents a share of 6.62%. The municipal supervisors carried out 3,860 inspections during which a breach was identified. An administrative measure was imposed during 270 of these inspections. In terms of percentage this means that an administrative measure was imposed in 4.25% of the total number of inspections during which a breach was identified.

The actors that most frequently used the instrument 'administrative measure' were ANB, AZ&G and local police supervisors. In the survey for the present environmental enforcement report, ANB indicated having imposed 90 administrative measures. This actor carried out 1,276 inspections during which a breach could be identified. As a result, the share of the administrative measure is 7.05%. The local police supervisors carried out 1,836 inspections during which a breach could be identified. A total of 270 administrative measures were imposed, which represents a share of 14.71%. AZ&G imposed 55 administrative measures on a total of 486 inspections during which a breach was identified.

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

The table below gives an overview of the share of the different types of administrative measures in relation to the total number of imposed administrative measures per enforcement actor. Since the number of administrative measures is not compared here to the total number of performed inspections during which a breach was identified, it is possible to make a comparison with the data from the Environmental Enforcement Report 2009. 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>85</sup>			Regularisation order <sup>86</sup>			Administrative enforcement <sup>87</sup>			A combination of the above-mentioned administrative measures		
	2010		2009	2010		2009	2010		2009	2010		2009
	n	%	%	n	%	%	n	%	%	n	%	%
AMI	17	29.31%	100.00%	37	63.80%	0.00%	1	1.72%	0.00%	3	5.17%	0.00%
AMV	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
ALBON	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
VLM	3	20%	0.00%	9	60%	100.00%	0	0.00%	0.00%	3	20%	0.00%
VMM	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
AZ&G	2	3.64%	7.14%	51	92.72%	85.71%	2	3.64%	7.14%	0	0.00%	0.00%
ANB	14	15.55%	0.00%	54	60.00%	0.00%	0	0.00%	0.00%	22	24.45%	100.00%
OVAM	0	0.00%	0.00%	1	20.00%	100.00%	4	80.00%	0.00%	0	0.00%	0.00%
W&Z	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
AWV	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
AMT	0	0.00%	-	0	0.00%	-	0	0.00%	0.00%	0	0.00%	0.00%
Nv De Scheepvaart	0	0.00%	-	0	0.00%	-	0	0.00%	0.00%	0	0.00%	0.00%
Provincial supervisors	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%	0	0.00%	0.00%
Municipal supervisors	30	18.29%	25.00%	77	46.95%	57.58%	4	2.44%	1.52%	53	32.32%	15.91%
Local police supervisors	9	3.33%	27.94%	32	11.85%	64.71%	6	2.22%	4.41%	223	82.60%	2.94%

Table 48 Nature of the administrative measures imposed in 2010 and comparison of the percentage share in 2009 and 2010

A first rather general trend that can be derived from the above table is the fact that certain actors, such as AMI, VLM, ANB and OVAM used varied types of administrative measures in 2010 in comparison to 2009. In the survey year 2010, for instance, the Environmental Inspectorate Division used every administrative

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

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

87 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.

measure available. This actor indicated having imposed a total of 58 administrative measures. The most frequently applied measure for this actor was the 'regularisation order'. This measure was applied 37 times, which represents a percentage share of 63.80%. Next to the 'regularisation order', the 'prohibition order' was also very frequently imposed, accounting for a share of 29.31% of the total number of imposed administrative measures. In 2009, the Environmental Inspectorate Division only imposed prohibition orders, however. The 'combination of the aforementioned administrative measures' was also used in 3 cases. Apart from the administrative enforcement, this type of measure was thus the least often applied.

Since the 2009 survey the Flemish Land Agency too has been adopting a more varied approach to the imposition of administrative measures. In 2009, only the regularisation order was used. In the 2010 survey, this actor indicated having used the 'prohibition order' and the 'combination of the aforementioned administrative measures' in an equal number of cases. Both measures were each applied three times. The most frequently used measure was the 'regularisation order'. This accounted for 60% of the total number of administrative measures. The measure 'administrative enforcement' was not applied by VLM. Although it concerns a total of 15 administrative measures here, it can be cautiously concluded that, compared to 2009, more use was made of the different types of administrative measures. A similar trend was reported for the Public Waste Agency of Flanders. Whereas in 2009 OVAM only imposed regularisation orders, for 2010 it also indicated having imposed the administrative enforcement measure. Of the 5 administrative measures that were taken, 4 times an administrative enforcement measure was imposed. The other administrative measure was a regularisation order.

In 2010, the Agency for Nature and Forests, like the other actors, made more frequent use of the instrument 'administrative measure'. In 2009, 24 administrative measures were imposed which each time involved a combination of the available administrative measures. In the last survey year these measures accounted for a share of 24.45%. Moreover, this actor used more often different types of administrative measures in 2010. For instance, the regularisation order was applied the most, namely 54 times. The prohibition order was applied in 14 cases, which comes down to a share of 15.55%. The administrative enforcement measure was never applied.

The actor Agency for Care and Health issued a total of 55 administrative measures in 2010. For this actor as well there is thus an increase in the use of administrative measures. In 2009, it took 14 administrative measures. In 2010, it mainly issued regularisation orders. This administrative measure represented a share of 92.72% on the total of administrative measures taken by AZ&G. In this way the actor followed the same trend as in 2009 when this last measure was most frequently used as well.

The instrument 'administrative measure' was most often used by municipal supervisors and local police supervisors. These actors indicated having imposed respectively 164 and 270 administrative measures. In 46.95% of the total number of administrative measures imposed by the municipal supervisors this was a regularisation order. As opposed to the local police supervisors, this was the most commonly used measure. The local police supervisors used almost exclusively (82.60%) the combination of administrative measures.

In the survey for this environmental enforcement report an additional question was included about how many administrative measures 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:

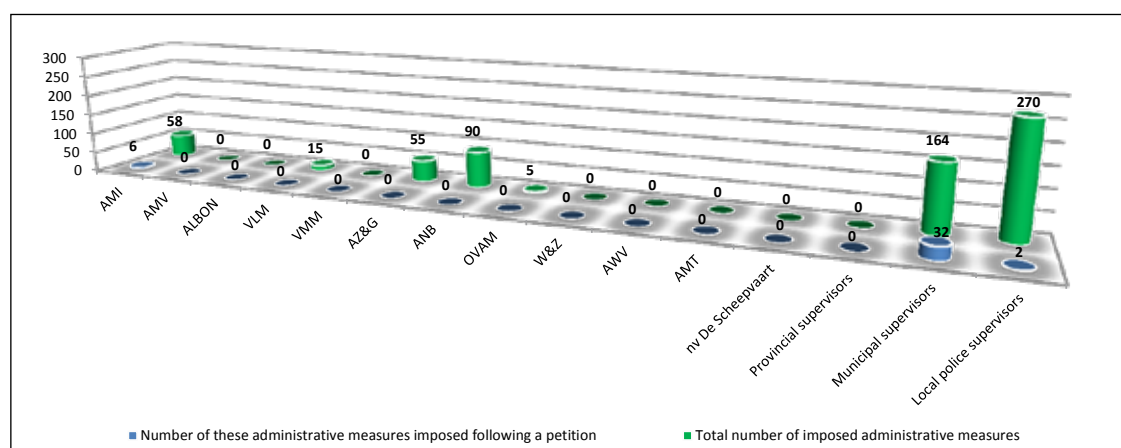
- ▶ natural persons and legal persons who suffer direct detriment as a result of the environmental infringement or environmental offence;



- ▶ 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 the implementation thereof. 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 2010 survey year. This also includes the number of administrative measures that were imposed following a petition.

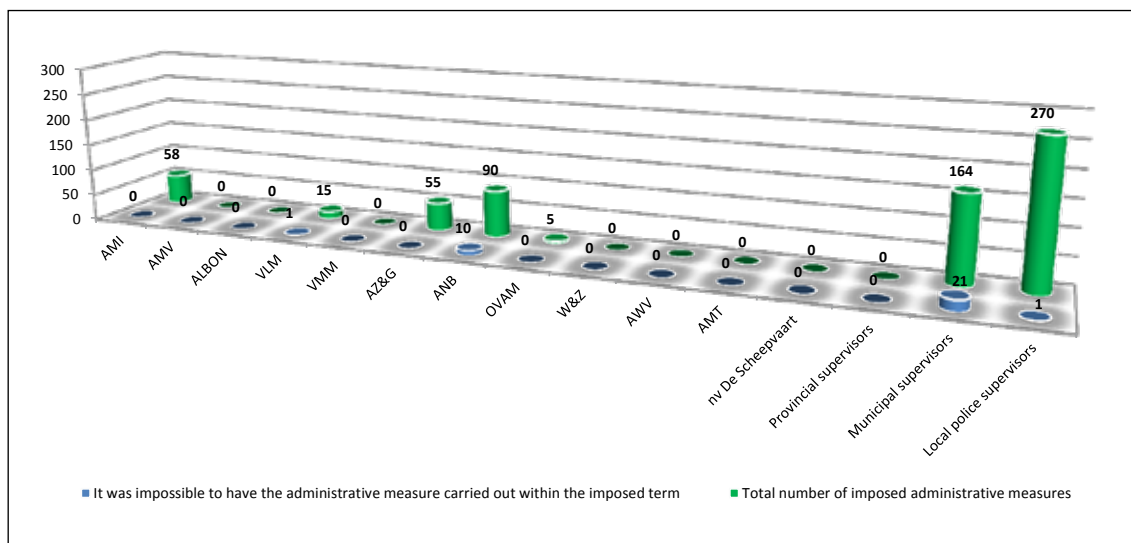


Graph 37 Overview of the number of administrative measures - imposed in 2010 - following a petition

On the basis of this graph it can also be observed that only 7 actors imposed administrative measures. Three of these actors imposed administrative measures following a petition. AMI and the local police supervisors imposed respectively 6 and 2 administrative measures following a petition. This is substantially less than with the municipal supervisors where about 1 in 5 (19.51%) of all the administrative measures were imposed following a petition.

One of the reasons why the municipal supervisors imposed the largest number 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.

A prerequisite for the effectiveness of administrative measures is that they are actually implemented within the set term. Delaying these measures may cause greater detriment and lead to 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. In order to find out what is the share of administrative measures that was not implemented within the set term, the different actors were asked to give this number. These numbers are reflected in the graph below, together with the total number of imposed administrative measures.



**Graph 38** Number of administrative measures imposed in 2010 which could not be implemented within the imposed term

On the basis of the given figures it can be stated that there is no systematic problem with the implementation of administrative measures. In total, all the actors imposed 657 administrative measures, 33 of which were not implemented in time. This is a percentage of 5% on the total of measures.

When considering the figures per actor, it turns out that on a total of 7 actors that imposed an administrative measure, 4 actors indicated that not all administrative measures were implemented in time. This happened only once within the VLM on a total of 15 administrative measures. The local police supervisors also had one case in which the administrative measure was not carried out in time. This is a very low number for this actor, compared to the 270 administrative measures that were imposed. The actors that were confronted the most with a delayed implementation of administrative measures were ANB and the municipal supervisors. With these actors, respectively 10 and 21 administrative measures were not implemented in time. However, this too seems to be a rather low number, since the share for ANB was 11.1% and for the municipal supervisors 12.8% of the total number of imposed administrative measures.

### 3.8.2 Appeals against orders containing administrative measures

#### 3.8.2.1 Number of appeals lodged against orders containing administrative measures and relevant decisions

Article 16.4.17 of DABM stipulates that the suspected offender may lodge an appeal against an order containing administrative measures with the Minister. The appeal must be submitted to the Minister within a period of fourteen days from the notification of the order containing administrative measures, at the address of the Environmental Enforcement, Environmental Damage and Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy.

In 2010, 39 appeals were lodged with the Minister against orders containing 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 advice to the Minister. The figures, received through the survey of the AMMC, revealed that 10 appeals were declared inadmissible. Of the 29 appeals that were declared admissible, 12 appeals referred to environmental health and 17 to nature protection.

The Minister has to take a decision within a period of 90 days from the 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. This was done in 5 appeal cases in 2010.

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 defined by the Flemish Parliament Act. This was the case for all the appeals that were declared admissible in 2010. As for the decision of the Minister in these appeal cases, 6 appeals were declared fully admissible and 8 appeals only partially. The other 15 appeals were declared inadmissible.

The graph below shows the percentage of appeals against orders containing administrative measures in comparison to the total number of administrative measures imposed, by nature, both for 2009 and 2010.

Nature of the imposed administrative measures	% of appeals against orders containing administrative measures in comparison to the number of imposed administrative measures	
	2010	2009
Prohibition order	9.33%	9.09%
Regularisation order	6.51%	1.48%
Administrative enforcement	0.00%	0.00%
A combination of the aforementioned administrative measures	1.64%	10.64%

*Table 49 % of appeals against orders containing administrative measures in comparison to the number of imposed administrative measures*

Since the nature of the imposed administrative measures has changed compared to 2009, a change can also be expected in the nature of the appeals. For the prohibition order, an appeal was lodged against 7 of the 75 imposed prohibition orders, which is thus in 9.33% of the cases. This is not all that different from 2009.

An increase in the number of appeals was recorded for the regularisation order: here, 17 appeals against orders containing administrative measures were lodged in the last survey year 2010. This is a share of 6.51% on a total of 261 imposed administrative measures of this type. Compared to 2009, where this share was still 1.48%, this is a relatively large increase. A direct reason for this figure is not available and is to be further examined. A possible explanation could be that the parties involved, who were confronted with the administrative measure, are more familiar with the procedures (compared to 2009 when these measures entered into effect on 1 May) and therefore try more frequently to have the imposed measure annulled.

No appeals were received against the administrative measure 'administrative enforcement'. This type of measure is not common. One explanation could be that due to its lower application rate, the cases relating to this measure are hardly under discussion when it is imposed, as a result of which an appeal is not so readily lodged against it.

The strongest decrease in the number of appeals lodged against the imposition of an administrative measure is recorded in the combination of the aforementioned administrative measures. In 2009, an appeal was lodged for 1 in 10 imposed combinations of the aforementioned administrative measures. In 2010, this share fell to 1.64% (5 appeals on 304 administrative measures of the discussed type). Again, there is no real explanation for these figures. An opposite reasoning could be made as with the regulari-

sation order. The supervisors have more expertise and knowledge of this type of measure, as a result of which the cases are more solid and it becomes less self-evident for the parties involved to lodge an appeal against the imposed measures. Further research into this will give more certainty about the explanation of this figure.

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

In 2010, 8 appeals were lodged against refused petitions for the imposition of administrative measures. Out of these 8, 1 appeal was declared fully admissible and 1 appeal partially admissible. The other 6 appeals were declared inadmissible. The Minister has to take a decision within a period of 60 days from the receipt of the appeal. This is an indicative period, and the expiry of the measure in case the period is not observed does not apply here. For one of the appeals no decision was reached within the period defined by the Flemish Parliament Act.

The following section of this chapter will discuss the instrument 'safety measure', both the application thereof by the actors and the comparison with the data from the Environmental Enforcement Report 2009.

## 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 assessment of those figures, Articles 16.7.1 and 16.7.2 are reproduced below.

Article 16.7.1 defines the instrument 'safety measure' 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 very 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 aimed at penalisation. What prevails in a safety measure is the general interest, including the protection of public health, order, peace and quiet, and safety.<sup>88</sup> Because safety measures can be imposed by

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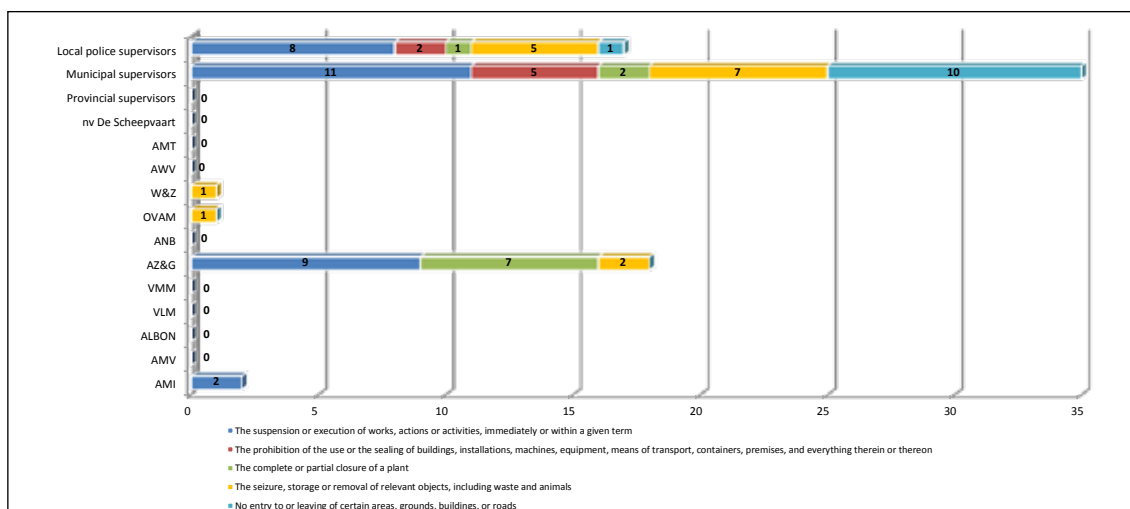
<sup>88</sup> Explanatory Memorandum; parliamentary proceedings, Session 2006-2007, 13 June 2007, Document 1249 (2006-2007) - No. 1, pages 12 and 15.

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 against 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 in 2010.

The table and graph below give an overview of the number and the type of imposed safety measures, broken down by environmental enforcement actor in 2010.

	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	2	0	0	0	0	2
AMV	0	0	0	0	0	0
ALBON	0	0	0	0	0	0
VLM	0	0	0	0	0	0
VMM	0	0	0	0	0	0
AZ&G	9	0	7	2	0	18
ANB	0	0	0	0	0	0
OVAM	0	0	0	1	0	1
W&Z	0	0	0	0	1	1
AWV	0	0	0	0	0	0
AMT	0	0	0	0	0	0
Nv De Scheepvaart	0	0	0	0	0	0
Provincial supervisors	0	0	0	0	0	0
Municipal supervisors	11	5	2	7	10	35
Local police supervisors	8	2	1	5	1	17
<b>Total</b>	<b>30</b>	<b>7</b>	<b>10</b>	<b>15</b>	<b>12</b>	<b>74</b>

Table 50 Nature of the imposed safety measures



*Graph 39 Nature of the imposed safety measures*

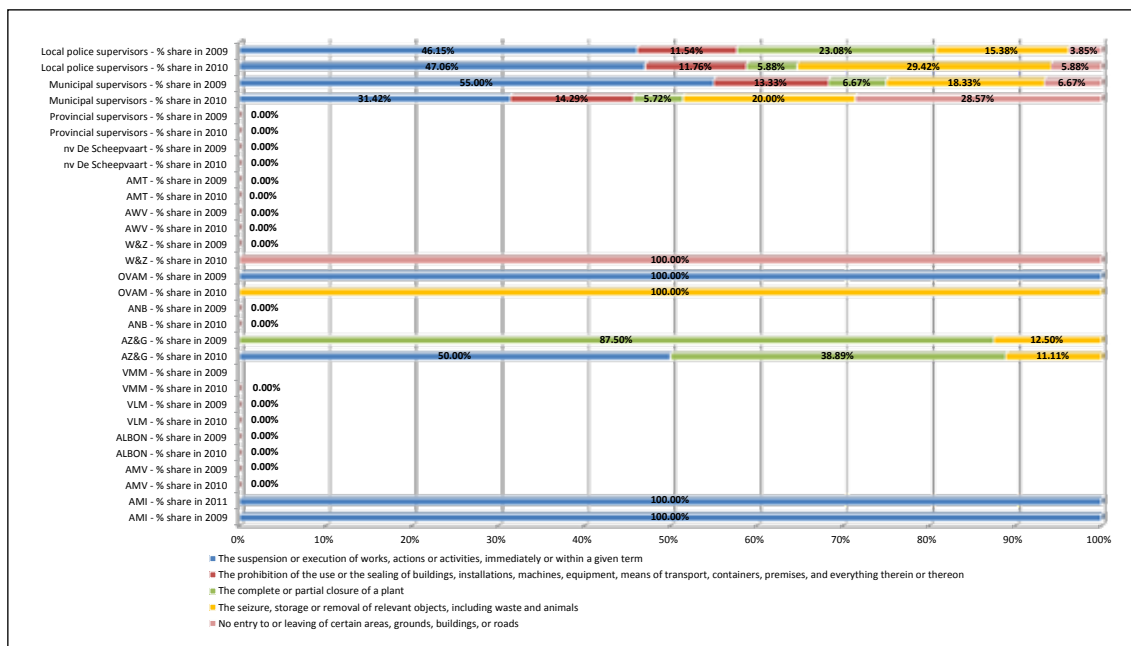
The figures above show that in 2010 a total of 74 safety measures were imposed by the environmental enforcement actors.

The most frequently used safety measure is 'the suspension or execution of works, actions or activities, immediately or within a given term'. More than 40% of the total number of imposed safety measures were of this nature. 20% of the 74 safety measures referred to 'the seizure, storage or removal of relevant objects, including waste and animals' and in nearly 14% the measure implied 'the complete or partial closure of a plant'. In just over 16% of the total of imposed safety measures the supervisors opted for 'no entry to or leaving of certain areas, grounds, buildings, or roads'. The least popular safety measure is 'the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon'. This type of safety measure was used in 9.46% of the total number of imposed safety measures.

Most safety measures were taken by the local supervisors. In 2010, the municipal supervisors took a total of 35 safety measures, and the local police supervisors 17. The regional environmental enforcement actors, on the other hand, made very little use of this instrument. Hardly 4 out of the 12 regional supervisors took safety measures in 2010. Waterwegen en Zeekanaal NV and OVAM each took safety measures once and the Environmental Inspectorate Division twice. However, in 2010, the Agency for Care and Health used the instrument 'safety measure' 18 times. In 50% of the cases it concerned the suspension or execution of works, actions or activities.

The Environmental Enforcement Report 2009 indicates that in 2009 a total of 97 safety measures were taken. Despite the fact that the studied period barely covered 8 months in 2009 (since the entry into effect of the Environmental Enforcement Act), more safety measures were thus imposed in 2009 than in 2010. 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 Report 2009.

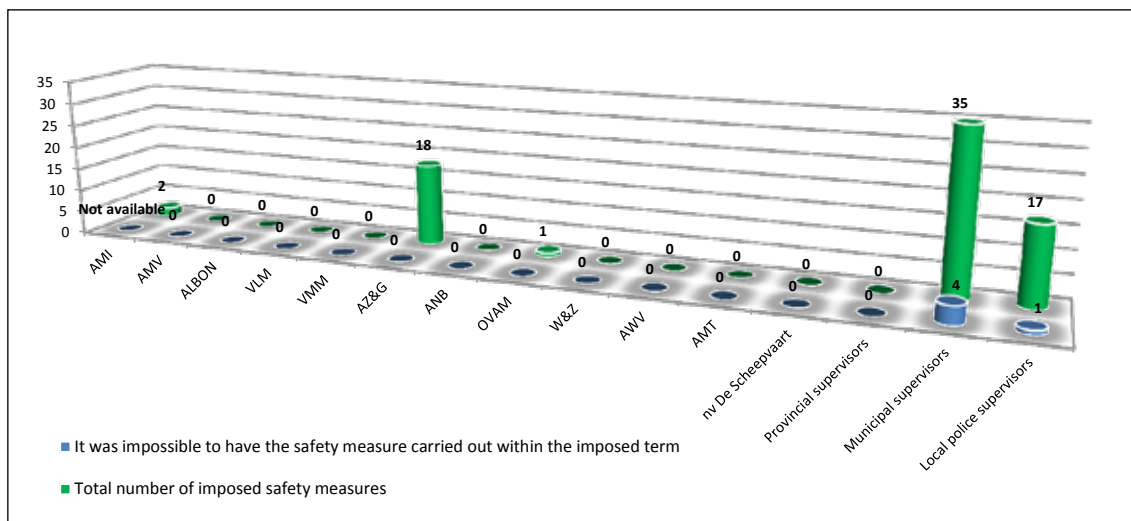
However, the Environmental Enforcement Report 2009 clearly shows that at the time safety measures were already mostly imposed by local supervisors. In 2009 as well, the instrument was mainly used by local supervisors and less by regional supervisory bodies. On the total of safety measures taken in 2009 in the Flemish Region, no less than 61.86% originated from municipal supervisors, 26.80% from local police supervisors and barely 11.34% from regional supervisors. The graph below shows the difference between the types of safety measures that were taken by the different enforcement actors in 2009 and 2010.



Graph 40 Nature of the imposed safety measures - comparison of the percentage share per supervisory body in 2009 and 2010

It can be derived from the above graph that above all the local supervisors imposed the various types of safety measures in 2009 and 2010. The most frequently used safety measure - both by local police supervisors and municipal supervisors in 2009 as well as in 2010 - is the suspension or execution of works, actions, or activities. The Environmental Inspectorate Division on the other hand only imposed the ‘suspension or execution of works, actions or activities’ as safety measure in 2009 and 2010. In 2009, the Agency for Care & Health mainly imposed the complete or partial closure of a plant as safety measure. However, in 2010 50% of the safety measures imposed by the Agency for Care & Health referred to the suspension or execution of works, actions or activities. In 2009 as well as in 2010 OVAM imposed only one safety measure. In 2009, this was the suspension or execution of works, actions or activities and in 2010 the seizure, storage or removal of relevant objects, including waste and animals. In 2009, Waterwegen en Zeekanaal NV did not impose any safety measures. In 2010, on the other hand, ‘no entry to or leaving of certain areas, grounds, buildings, or roads’ was imposed once as a safety measure.

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 41 Number of safety measures imposed in 2010 which could not be implemented within the imposed term

Only 5 of the 74 imposed safety measures, or 6.76%, could not be implemented within the set term. However, the Environmental Inspectorate Division indicated that it was impossible to provide a clear answer to this due to various practical reasons.

The five safety measures that were not implemented in time are safety measures imposed by local supervisors. This can probably be explained by the fact that they also took the largest number of safety measures in 2010. The tables and graphs below focus specifically on the safety measures taken by these local supervisors, namely the municipal supervisors and the police district supervisors.

### 3.10 Conclusion

The graphs and tables on the previous pages illustrate, in terms of percentage, the use which individual enforcement actors made of the complete set of enforcement instruments in relation to the number of performed inspections during which a breach was identified by the enforcement actor in question. Besides the use of the enforcement instruments, the graphs and tables also include the number of enforcement inspections where no further action was taken when a breach was identified and the number of inspections during which no breach was identified. Contrary to 2009, it was also asked in the present environmental enforcement report to give the 'number of inspections with unknown results'.

In the first instance, the total number of inspections during which a breach was identified was compared to the total number of inspections carried out. An important - and positive - conclusion that can be drawn here is the fact that in nearly 70% of the inspections no breach could be identified, which could point to a generally high compliance rate. Despite this high percentage, there seem to be great differences between the actors. For a number of actors a breach was actually identified during less than 10% of the inspections, whereas for other actors this amounted to over 90%. This may be explained by the difference in how the various enforcement actors implement inspections following complaints and reports and how they carry out inspections at their own initiative.

The number of inspections with unknown results can rise to 53.07% of the total number of inspections carried out. Despite this percentage there is not really a systematic problem, since 'inspections with unknown results' could only be identified with 5 of the 15 actors. When asked about the number of inspec-



tions during which an environmental infringement or environmental offence was identified but no further action was taken, 4 actors indicated being aware of this. Again, this is not a general trend.

In the following discussion of the individual enforcement instruments the same order will be used as in Chapter 3 above. Hence, the first item that will be discussed is the 'recommendation'.

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. There are great differences in the use of this instrument. Certain actors did not make any use at all of the recommendation, whereas other actors used the instrument for more than half of the performed inspections during which no breach was identified.

While the 'recommendation' is rather a preventive instrument, the instrument '**exhortation**' is a curative instrument with which supervisors, in the performance of their supervisory duties, can exhort the suspected offender to take the necessary measures. A first note that needs to be made with regard to the exhortation is that, when looking ahead at the instrument 'official report', a lot more exhortations were given than that official reports were drawn up or identification reports could be made. Strictly speaking, this should be impossible since in case of an 'exhortation' an official report should always be drawn up or an identification report can be made. Each of the actors, except one, used the instrument when they also carried out inspections during which a breach was identified. However, certain actors formulated more exhortations than the number of given inspections during which a breach was identified. It can be concluded that the instrument 'exhortation' has been given its place and is maintained within the modus operandi of the different actors.

It could be derived from the figures from the 2009 survey that the instrument '**identification report**' is still not very known among supervisors. Still, the 2010 survey also reveals that the 'identification report' is still not very often applied either. 81 identification reports were drawn up on a total of 10,424 inspections during which a breach was identified. However, it is not possible to indicate whether this breach was an environmental infringement or an environmental offence. In relation to the 'identification report' it is important, however, to refer to Article 16.3.23 of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy. This article stipulates that supervisors MAY draw up an identification report when an environmental infringement is identified. Contrary to the provisions of Article 29 of the Code of Criminal Procedure, on the basis of which an official report has to be drawn up for all identified breaches, the Environmental Enforcement Act leaves supervisors the choice to take action when identifying an environmental infringement. An important explanation for the limited number of identification reports drawn up by some supervisors is the fact that in some environmental legislation (such as the Nature Protection law) hardly any breaches are entered as environmental infringements.

In other words, drawing up an identification report is not an obligation. Supervisors have discretionary power in this respect and can therefore judge themselves whether its use is appropriate. However, it should be noted that when an identification report in the sense of the Environmental Enforcement Act is drawn up, this must also be actually forwarded to the AMMC. Consequently, the figures quoted for the number of 'inspections without further action' may be explained by the fact that supervisors take no action when identifying breaches. Taking into account the aforementioned data, the question arises as to whether the discretionary power of the supervisors should be further examined in this framework.

Another possible explanation for the limited number of identification reports drawn up could be the fact that there were few consequences for the environment. It can therefore be assumed that enforcement actors have other priorities, and that maximum efforts are concentrated on dealing with environmental offences. It may also be useful in this framework to evaluate the exhaustive list of environmental infrin-

gements.

The '**official report**', unlike the 'identification report', is most certainly not a new enforcement instrument. However, not every enforcement actor used this to the same extent. For instance, a certain actor drew up an average of 2.5 official reports during 1 inspection during which a breach was identified, whereas other actors did not draw up any official reports at all during these inspections during which a breach was identified.

For the '**administrative measures**' no further mention will be made of the share of the various types that were used. This evaluation was already made earlier. For 2009 it was remarked that this instrument was mainly used by local supervisors. The regional supervisors as well seemed to become more familiar with this instrument in 2009, but its general application remained rather limited. With regard to 2010, the figures reveal that the regional actors have become more familiarised with the instrument 'administrative measure'. The total share of this instrument on the total of inspections during which a breach was identified is 6.3%.

Between 1 January 2010 and 31 December 2010 the Minister in charge of the environment received 29 **appeals against orders containing administrative measures** (including one withdrawal). These 29 appeals were declared admissible by the AMMC. The Minister reached a decision on 28 admissible appeals within the term defined in the Flemish Parliament Act. An extension was applied for in 5 cases. 6 appeals were declared fully admissible and 8 partially admissible.

Besides appeals against orders containing administrative measures, 8 **appeals** were submitted **against refused petitions for the imposition of administrative measures** in the same period. These appeals were all declared admissible by the AMMC. It was decided that one appeal was declared partially admissible and one appeal was declared fully admissible. For 7 of these 8 appeals a decision was reached within the decision period defined by the Flemish Parliament Act.

Just like the instrument 'administrative measures' the instrument '**safety measure**' is also especially used by the local supervisors. However, there are not really any signs that the regional enforcement actors have a lack of knowledge and/or expertise to use this instrument.

It will be important to develop clear guidelines with regard to the way in which supervisors are to use the various enforcement instruments, not just for the safety measure, but for all the enforcement instruments, and above all for all the enforcement actors. These guidelines should not only indicate which instrument should be used at a specific moment, but also which is the ideal combination of the available set of enforcement instruments.

In this matter the VHRM is willing and has the intention to act as the forum for the various enforcement actors where information and experiences can be exchanged. This will allow a number of customised criteria to be developed by each individual enforcement actor for a (combined) application of the set of enforcement instruments. Because the problems, advantages and disadvantages that have been experienced by colleagues can be taken into account in the development, the actors will not only be able to work more effectively and efficiently when developing guidelines, but the guidelines of the enforcement actors will also be better attuned to each other.

## 4 Evaluation of the Flemish Environmental Sanctions Policy in 2010

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 (DABM), a framework was created within which, in addition to criminal sanctions, administrative sanctions could be applied in the form of alternative and exclusive administrative fines, whether or not with deprivation of benefits<sup>89</sup>. To this end, a distinction was introduced 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, concretely the afdeling Milieuhandhaving, Milieuschade en Crisisbeheer or AMMC (Environmental Enforcement, Environmental Damage and Crisis Management Division) 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 Environmental Enforcement, Environmental Damage and Crisis Management Division of this in due time, the environmental offence can be penalised by the AMMC with an alternative administrative fine.

When an environmental infringement is identified, the supervisor can draw up an identification report. This identification report is immediately sent to “the regional body” (called as such in DABM), which is the Environmental Enforcement, Environmental Damage and Crisis Management Division. The regional body can impose an exclusive fine, whether or not 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 (whether or not accompanied by a deprivation of benefits). Within a period of 90 days from the notification, the regional body decides on the imposition of an exclusive administrative fine, whether or not accompanied by a deprivation of benefits. Within ten days the suspected offender must 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. The AMMC must be informed of this extension. Both a decision to subject an environmental offence to criminal proceedings and a public prosecutor’s failure to communicate his decision to the AMMC in due time rule out the imposition of an administrative fine.

If the public prosecutor informs the AMMC in due time of his decision not to prosecute the environmental offence, the AMMC must start the procedure aimed at the 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 (either accompanied by a deprivation of benefits or not) will be imposed. Within ten days the suspected offender must be informed of this decision.

<sup>89</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).

Decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division – relating to both alternative and exclusive administrative fines – may be appealed against to the Environmental Enforcement Court.

The Flemish Land Agency could already impose its own administrative fines before the Environmental Enforcement Act 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, and the amounts of the fines. In case of serious breaches, as referred to in Article 71 of the 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 2010, we will not only look at the activities of the public prosecutor's offices, but also at those of the Environmental Enforcement, Environmental Damage and Crisis Management Division, the Environmental Enforcement Court and the Flemish Land Agency. Here as well, the term 'evaluation' must be used with the necessary caution. Seeing as the Flemish Parliament Act came into force on 1 May 2009, introducing a lot of changes, it would be premature to draw definitive conclusions based on a period of 1.5 years within the framework of the Environmental Enforcement Act. However, by combining the figures from the Environmental Enforcement Report 2009 with the data provided in the survey for the present environmental enforcement report, it is possible to already identify a number of trends.

#### **4.1 Evaluation of the criminal sanctions policy**

As we have indicated above, when an environmental offence is identified the person identifying 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.

In this environmental enforcement report it is therefore important to evaluate the criminal sanctions policy pursued in 2010. Therefore, 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 figures can be discussed, first some notes must be made 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>90</sup>

It should be pointed out that in these data a different terminology is used than the one which we have been using up to now in this environmental enforcement report.

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>90</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). However, a slight overestimation is inevitable.

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 into the database and assigned a reference number. If this official report has to be referred to another public prosecutor's office, it is entered into the database once more, and assigned a new reference number.

Simplified official reports<sup>91</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 those simplified official reports. However, if the official report is requested by the public prosecutor's office after all, the database does take this case 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 mentioned that the presented statistics from the public prosecutor's offices are not statistics on crime or breaches of the regulations, and must therefore not be interpreted as such. They merely represent an overview of the reports drawn up in environmental law enforcement cases.

Just like in the previous chapters, the VHRM will try to make a comparison between 2009 and 2010 on the basis of the data from the Environmental Enforcement Report 2009 and the data received during the survey for the Environmental Enforcement Report 2010. The data from the Environmental Enforcement Report 2009 that are used to make a comparison between 2010 and 2009 regard official reports drawn up after 1 May 2009, and in the case of the official reports drawn up within the framework of Nature Protection law, after 25 June 2009. Therefore, these data were selected on the final date of the breaches included in the official report. If the final date was not known, a selection was made on the starting date of the breaches. If the starting date was not entered in the database either, a selection was made on the day that the case was submitted to the public prosecutor's office. Since the 2009 data do not cover an entire calendar year and the 2010 data refer to the complete calendar year 2010, no comparisons can be made between the real figures. For this reason, comparisons will only be made in terms of percentage with regard to the total number of registered cases. However, it must be pointed out that it is really too early to draw conclusions on the basis of the data extracted on 10 January 2010 and 10 January 2011 about the extent to which cases registered in 2009 and in 2010 are processed differently. The figures are only 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):

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

- ▶ Nature protection law:
  - ▶ 63A - Hunting
  - ▶ 63B - Fishing
  - ▶ 63M - Flemish Parliament Act on forests
  - ▶ 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>92</sup>:
  - ▶ 64E - Illegal dumping
  - ▶ 64F - Waste management
  - ▶ 64L - Importation and transit of waste (Law of 9 July 1984)
  
- ▶ Manure:
  - ▶ 63I - Manure
  - ▶ 63O - Flemish Parliament Act on manure
  
- ▶ Licences:
  - ▶ 64D - Commodo-Incommodo (Environmental Licence)
  - ▶ 64H - Operation of an unlicensed plant
  - ▶ 64I - Failure to comply with Vlarem 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 cases of environmental enforcement was made on the basis of the above-mentioned charge codes.

First of all, a picture will be provided 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, depending on the reporting authority.

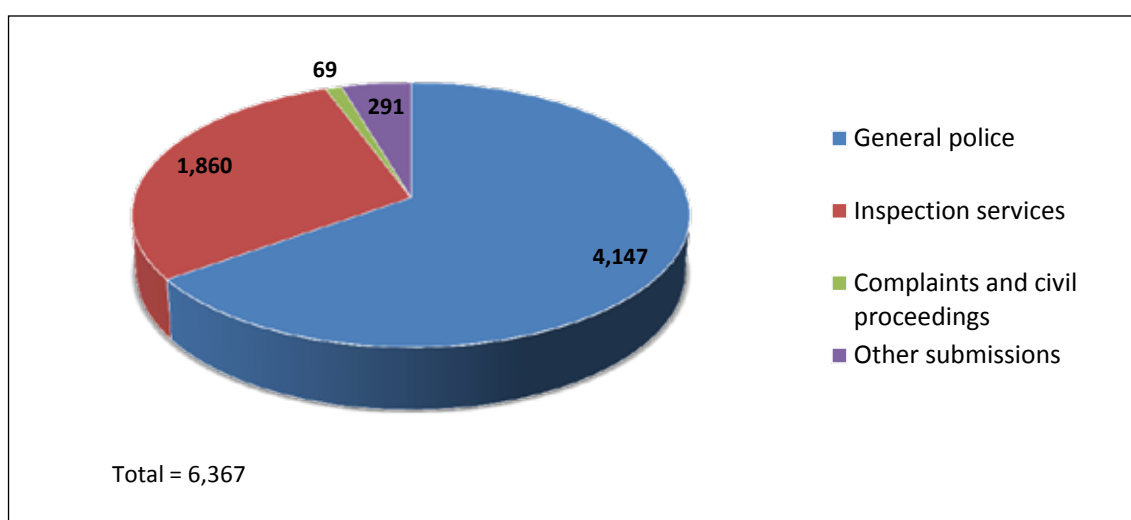
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<sup>92</sup> There are no separate charge codes (number and letter) for breaches relating to the Flemish Parliament Act on soils, which is why these are classified under the charge code 'waste'.

Then, we will look at the last state of progress (on 10 January 2011) of the cases which the public prosecutor's offices received in 2010, 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 2011, it is important to interpret the state of progress of these cases in their right context. The data and percentages mentioned in this context only refer to the situation on 10 January 2011, and do not reflect the definitive status of the cases. Consequently, only trends can be described, and certainly no final conclusions can be drawn.

#### 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 2010, per reporting authority, and subdivided into four different categories, namely: *general police*, *inspection services*, *complaints and civil proceedings*, and *other submissions*.<sup>93</sup>



Graph 42 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010, per reporting authority

In total, throughout 2010, the public prosecutor's offices received 6,376 cases, 65.46% (4,147) of which were submitted by the general police<sup>94</sup> as reporting authority and 29.17% (1,860) of which were submitted by the inspection services<sup>95</sup> as reporting authority. Complaints and civil proceedings<sup>96</sup> made up 1.02% (69), while other submissions<sup>97</sup> made up 4.56% (291) of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in 2010.

On the basis of the above graph it can be observed that most environmental breaches were reported by the general police. This trend is also clear from Chapter 2.2.1 'Evaluation of the environmental enforcement policy pursued by the police', in which it is stated that the police drew up 18,756 official reports relating to environmental breaches in 2010. 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

<sup>93</sup> Cases recorded by the public prosecutors of the police courts are not included in the figures provided.

<sup>94</sup> The category 'general police' comprises local and federal police forces.

<sup>95</sup> The inspection services are administrative services with a limited competence to report breaches, such as the regional environment administrations (supervisors).

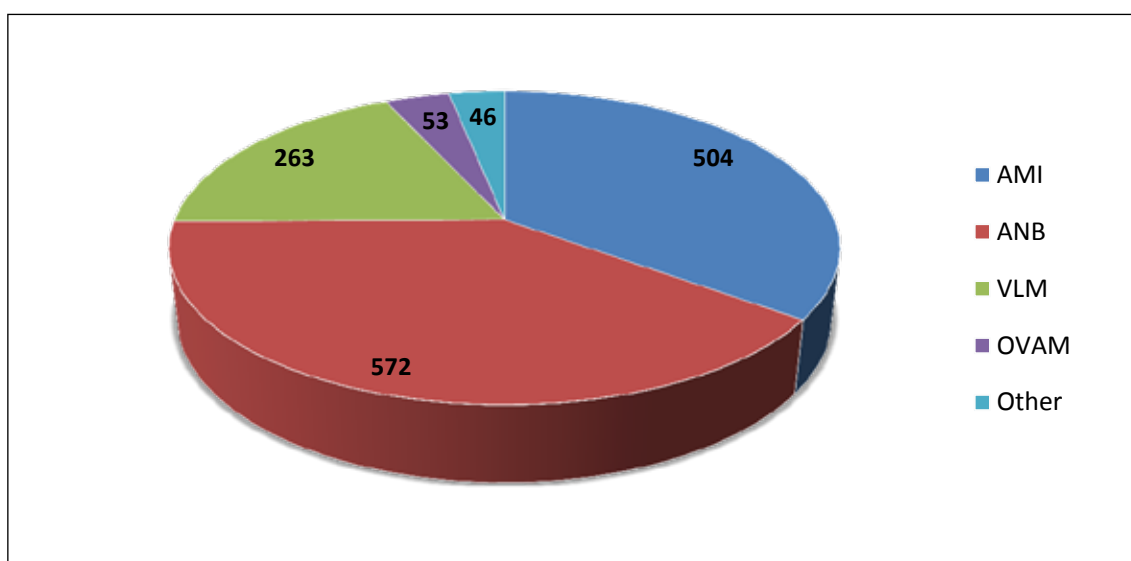
<sup>96</sup> It concerns complaints from private persons, as well as complaints from process servers or from private organisations and civil plaintiffs.

<sup>97</sup> 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 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.

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.

The aforementioned figures do not differ greatly from those of 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 and 26.89% from the inspection services. 1.09% referred to complaints and civil proceedings, and 4.98% to other submissions. The slight increase in the total number of recorded cases is thus revealed in the different categories, except in the category of 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 2010 are further subdivided by Flemish environmental enforcement service.



*Graph 43* 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

In 2003, a technical working group was set up within the Committee on Prosecution Policy, with the aim of improving insight into the 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, from 1 January 2005 onwards it was decided to use 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>98</sup>

Using these specific reference numbers, it was possible to create the graph above for 2010. This shows how many cases were submitted by each Flemish environment service as reporting authority.

In total, the Flemish environment services submitted 1,438 environmental enforcement cases to the public prosecutor's offices.

Currently, 'Forest & Green Areas' and 'Nature' together form the Agentschap voor Natuur en Bos (Agency for Nature and Forests). 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. ANB also submitted most cases to the public prosecutor's office in 2010, namely 39.78% (572) of the total number of cases submitted to the public prosecutor's offices by the Flemish environment services. The Environmental Inspectorate Division represented 35.05% (504), the Flemish Land Agency 18.29% (263), the Public Waste Agency of Flanders 3.69% (53), and the remaining environment services 3.20% as well. It should also be noted, however, that the Flemish Environment Agency did not submit any cases at all to the public prosecutor's office in 2010, despite the fact that it shows from the previous chapters that the VMM indicated that five environmental enforcement inspections were carried out in 2010 and one official report was drawn up. In comparison with Chapter '3.6 Evaluation of the instrument 'official report', these figures are more or less similar. One striking difference is the number of official reports drawn up by the Agency for Nature and Forests, namely 815, and the number of environmental enforcement cases from the Agency for Nature and Forests as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010, namely 572. This can be explained by the fact that the number of official reports of the Agency for Nature and Forests is also processed by the police courts. Another striking element is that the Flemish Land Agency indicated having drawn up 45 official reports in 2010, whereas 263 environmental enforcement cases from the Flemish Land Agency were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010. An explanation could not really be given for this.

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, for some cases the process by which they were included in the figures above cannot be identified. The VHRM again recommends that the different environment administrations make consistent use of these codes.

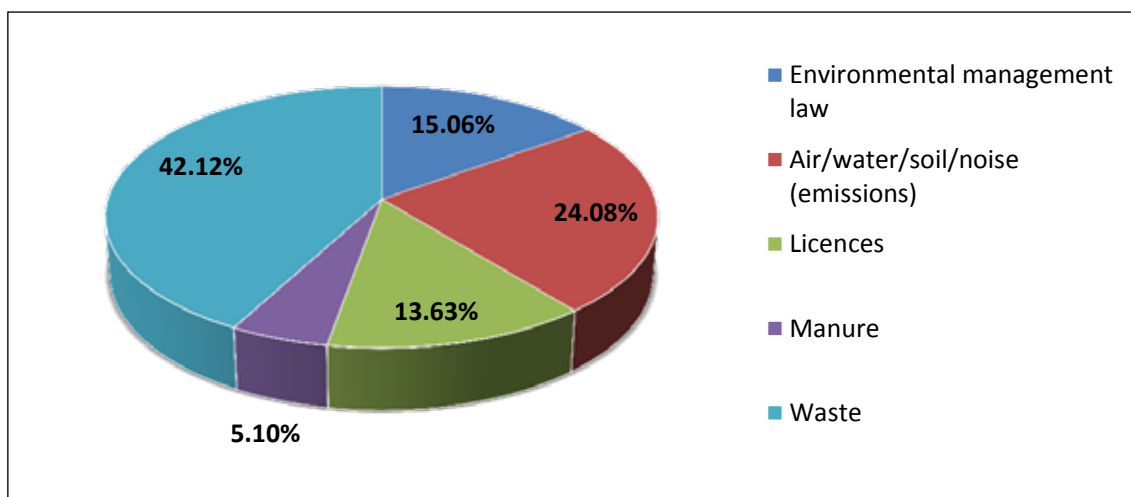
In comparison with the 2009 figures, the number of environmental enforcement cases from the Flemish environment services, as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, has risen from 1,202 in 2009 to 1,438 in 2010. In concrete numbers this rise can be observed within all environment services, with the exception of the Agency for Nature and Forests. For the Agency for Nature and Forests a slight decrease is noted from 586 cases in 2009 to 572 cases in 2010. However, as indicated earlier, a number of official reports that are drawn up by the Agency for Nature and Forests are processed by the police prosecutors. Following the increase in the number of recorded cases of the other environment administrations, the percentage share of the Agency for Nature and Forests of the number of environmental enforcement cases, as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, also decreases from 48.75% in 2009 to 39.78% in 2010. That does not alter the fact that in 2010 as well the largest number of environmental enforcement cases that was recorded with the criminal divisions of the public prosecutor's offices originated from the Agency for Nature and Forests.

Earlier we have already provided an overview of the different charge codes that are used to record environmental enforcement cases. This allows us again to present an overview for 2010 in the graphs and ta-

<sup>98</sup> H7 would include mainly official reports coming from the Administration for Roads and Traffic (Administratie Wegen en Verkeer) and the Administration for Waterways and Maritime Affairs (Administratie Waterwegen en Zeewezen). As it was possible that these services would undergo changes, but no clear information was available on the 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.

bles 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 2010.

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 nature protection law, compared to the total number of cases recorded with one of these charge codes in 2010.



*Graph 44* Number 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 2010

In total this concerns 6,367 environmental enforcement cases that were recorded in 2010 by the criminal divisions of the public prosecutor's offices in the Flemish Region with respect to nature protection, emissions, licences, manure and waste.

With respect to waste the above 42.12% corresponds to 2,682 cases. For manure the 5.10% represents a total of 325 cases. In the category of licences 389 cases were recorded, or a total of 12.87%. In relation to emissions 1,533 cases were recorded. For nature protection a total of 959 cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region.

The majority of the environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 thus referred to waste and just under 1/4 related to emissions.

In the table below a further subdivision is made of the main charge codes Nature Protection Law', 'Emissions', 'Licences', 'Manure' and 'Waste'.

	Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region	6,367
Nature protection law	63A - Hunting	251
	63B - Fishing	150
	63M - Flemish Parliament Act on forests	104
	63N - Washington Convention - protected animal species, plants and ivory <sup>56</sup>	138
	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
	<b>Total Nature protection law</b>	<b>959</b>
Air/water/soil/noise (emissions)	64A - Air and water pollution	454
	64B – Carbon oxide (CO)	19
	64C - Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)	777
	64G - Illegal water abstraction	4
	64M - Surface water pollution	227
	64N - Groundwater pollution	52
	<b>Total Air/Water/Soil/Noise</b>	<b>1,533</b>
Licences	64D - Commodo-incommodo	177
	64H - Operation of an unlicensed plant	188
	64I - Non-compliance with Vlarem legislation	503
	<b>Total Licences</b>	<b>868</b>
Manure	63I - Manure	69
	63O - Flemish Parliament Act on manure	256
	<b>Total Manure</b>	<b>325</b>
Waste	64E - Illegal dumping	1,711
	64F - Waste management	894
	64L - Importation and transit of waste	77
	<b>Total Waste</b>	<b>2,682</b>

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, for cases in 2010*

As already indicated earlier, 'Waste' was the main charge code in 42.12% of the recorded cases. When looking at the charge code 'Waste' in greater detail, it can be observed that the majority refer to cases of illegal dumping, namely no less than 26.87% of the total number of environmental enforcement cases recorded in 2010. From this it can be concluded that 'illegal dumping' is still the most frequently reported environmental breach.

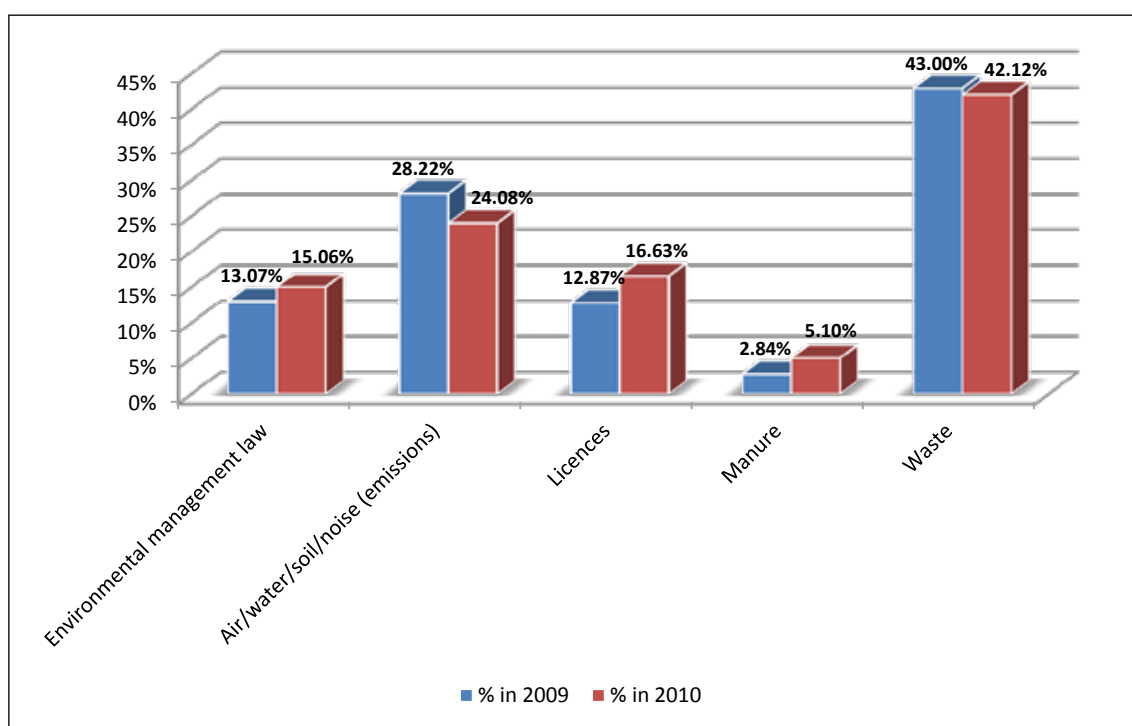
With almost 1/4 of the total number of recorded cases, the cases with 'Emissions' as main charge code also represent an important group. A remarkable number of cases relate to 'noise nuisance, decibels in urban environment', namely 777 cases or 12.20% of the total number of recorded environmental enforcement cases.

The charge codes 'Manure' and 'Flemish Parliament Act on manure' combined only make up a small share – namely respectively only 1.08% and 4.02% - of all the environmental enforcement cases recorded by the

criminal divisions of the public prosecutor's offices in the Flemish Region in 2010. However, this could be explained by the fact that in 2006 (see below), under the Flemish Parliament Act on manure, the Flemish Land Agency was made competent to issue some of its own administrative fines.

In order to allow for a comparison to be made between the figures from the Environmental Enforcement Report 2009 and the present environmental enforcement report, it is necessary to analyse the percentage share of each charge code with respect to the total number of recorded cases. The reason is that it is impossible to compare the real figures of 2009 with those from 2010, since the data from the Environmental Enforcement Report 2009 refer to the period from 1 May 2009 to 31 December 2009 for the cases with 'Waste', 'Licences', 'Emissions', and 'Manure' as main charge codes and to the period from 25 June 2009 to 31 December 2009 for the cases with 'Nature protection law' as main charge code. The data for the present environmental enforcement report, on the other hand, relate to the 2010 calendar year as a whole.

Therefore, the graph below provides a picture of the comparison of the percentage share of the charge codes with respect to the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2009 and 2010.



*Graph 45 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge for cases: comparison of percentage share in 2009 and 2010*

The above graph shows that the percentage share of the different charge codes with respect to the total number of recorded environmental enforcement cases has remained practically the same in 2009 and 2010. A small decrease can be observed in the share of cases with charge codes 'Emissions' and 'Waste' in favour of the three other charge codes 'Nature Protection', 'Licences', and 'Manure'.

#### 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 2010 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 2011. 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 based on the following states of progress:

#### **PRELIMINARY INVESTIGATION**

Cases which were still in the stage of preliminary investigation on 10 January 2011.

#### **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 always temporary. As long as the limitation period has not expired, the case can be reopened.

#### **CASE REFERRED**

This category comprises cases which on 10 January 2011 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 has been proposed but a final decision is still pending (including partially paid amicable settlements), 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 has been 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 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 has been 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 illustrates the last state of progress as at 10 January 2011 for the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010. 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 2010 and 2009, in order to make a comparison possible.

Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices	Preliminary investigation		Without further action		Case referred		Amicable settlement		Mediation in criminal cases		Investigation		Chambers		Writ of summons & further proceedings		Unknown / error		Total percentage per row
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	
Flanders	1,687	26.50%	3,505	55.05%	431	6.77%	7.08%	10.42%	1	0.02%	42	0.66%	10	0.16%	272	4.27%	4	0.06%	100.00%
Dendermonde	671	22.21%	439	65.42%	39	5.81%	13.06%	4.12%	1	0.15%	1	0.15%	0	0.00%	6	0.89%	0	0.00%	100.00%
Ghent	901	29.74%	388	43.06%	156	17.31%	20.20%	5.67%	0	0.00%	14	1.55%	3	0.33%	50	5.55%	0	0.00%	100.00%
Oudenaarde	282	41.84%	108	38.30%	5	1.77%	2.08%	23.96%	0	0.00%	0	0.00%	2	0.71%	0	0.00%	0	0.00%	100.00%
Bruges	643	31.57%	392	60.96%	12	1.87%	0.31%	3.76%	0	0.00%	6	0.93%	0	0.00%	21	3.27%	0	0.00%	100.00%
leper	182	29.67%	112	61.54%	11	6.04%	7.77%	0.00%	0	0.00%	0	0.00%	0	0.00%	3	1.65%	0	0.00%	100.00%
Kortrijk	678	22.57%	408	60.18%	42	6.19%	6.40%	3.35%	0	0.00%	0	0.00%	0	0.00%	60	8.85%	1	0.15%	100.00%
Veurne	137	40.15%	59	43.07%	9	6.57%	7.95%	2.27%	0	0.00%	0	0.00%	0	0.00%	9	6.57%	0	0.00%	100.00%
Antwerp	550	18.91%	231	42.00%	36	6.55%	6.00%	27.60%	0	0.00%	5	0.91%	0	0.00%	63	11.45%	0	0.00%	100.00%
Mechelen	245	15.92%	151	61.63%	21	8.57%	1.92%	19.23%	0	0.00%	3	1.22%	0	0.00%	13	5.31%	3	1.22%	100.00%
Turnhout	531	30.89%	327	61.58%	9	1.69%	1.91%	19.47%	0	0.00%	9	1.69%	2	0.38%	16	3.01%	0	0.00%	100.00%
Hasselt	287	29.97%	140	48.78%	18	6.27%	3.13%	11.25%	0	0.00%	0	0.00%	0	0.00%	7	2.44%	0	0.00%	100.00%
Tongeren	419	22.20%	242	57.76%	34	8.11%	10.53%	17.11%	0	0.00%	0	0.00%	2	0.48%	10	2.39%	0	0.00%	100.00%
Leuven	380	22.11%	197	51.84%	9	2.37%	1.24%	21.74%	0	0.00%	1	0.26%	1	0.26%	14	3.68%	0	0.00%	100.00%
Brussels	461	25.38%	311	67.46%	30	6.51%	0.88%	0.00%	0	0.00%	3	0.65%	0	0.00%	0	0.00%	0	0.00%	100.00%

Table 52 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010, possibly through addition to a mother case, including the state of progress on 10 January 2011 per category of charges and per judicial district, and comparison with the percentage share in 2009

In the above table it can be observed that just over 1/4 of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 were still in the stage of preliminary investigation. Compared to the percentage share this is a decrease with respect to the data from the Environmental Enforcement Report 2009 in which more than 1/3 of the environmental enforcement cases were still in the stage of preliminary investigation. This can possibly be explained by the fact that the 2010 figures pertain to the calendar year as a whole, whereas the figures in the Environmental Enforcement Report 2009 cover the period following the entry into effect of the Environmental Enforcement Act, namely as of 1 May 2009. Since the extraction of the figures took place each time in January of the next year, a larger percentage of cases were still in the stage of preliminary investigation, namely the cases from the first half of the year. A second explanation could be that in 2010 the public prosecutor's offices made even more frequent use than in 2009 of the possibility to refer cases to the AMMC in view of imposing an alternative administrative fine. The fact that they no longer needed to process these cases could have given the public prosecutor's offices more room to process other cases more rapidly.

A remarkable fact is that no further action was taken in more than half (55.05%) of the environmental enforcement cases recorded in 2010. In 2009, this amounted to only 41.35% of all the environmental enforcement cases. In the next section - 4.2.3 Reasons for dismissal - it will be indicated more specifically what the state of progress 'without further action' means exactly. The question must indeed be raised whether the increased percentage of the number of cases without further action is related to an increase in the number of cases that was referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division for the imposition of an administrative fine, since these cases are classified as 'without further action'. Still, this will be discussed in great detail in the next section. Another explanation may be the fact that the 2010 figures pertain to the calendar year as a whole, whereas the figures in the Environmental Enforcement Report 2009 cover the period following the entry into effect of the Environmental Enforcement Act, namely as of 1 May 2009. Since the extraction of the figures took place each time in January of the next year, it makes sense that more cases were already completely processed, more specifically the cases from the first half of the year.

In 6.52% of the environmental enforcement cases an amicable settlement was proposed in 2010. This is a decrease with respect to 2009 when an amicable settlement was proposed for 10.42% of the environmental enforcement cases. This remarkable decrease may be owing to the fact that the public prosecutor's offices referred a higher percentage of cases to the AMMC in 2010 than in 2009. 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 referred more readily to the Environmental Enforcement, Environmental Damage and Crisis Management Division (see below) for the imposition of an administrative fine. Within this framework it can be referred to the Classification Document of the public prosecutor 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 10 January 2011, 0.66% of the cases were still in the investigation stage, whereas in 4.27% of the cases recorded in 2010 a writ of summons was already issued. This is an increase compared to 2009. This could be explained by the fact that the public prosecutor's offices, following the referral of part of the environmental cases to the AMMC, have now more capacity to issue a writ of summons before the criminal court for the more significant environmental cases. This could therefore indicate that the system, as it is intended by the Environmental Enforcement Act, indeed works in practice.

When looking at the different criminal divisions of the public prosecutor's offices, it is remarkable that the strong increase in the number of cases without further action in 2010 compared to 2009 can be recorded within all the public prosecutor's offices. With more than half of the public prosecutor's offices, over half of the environmental enforcement cases recorded in 2010 remained without further action, whereas this



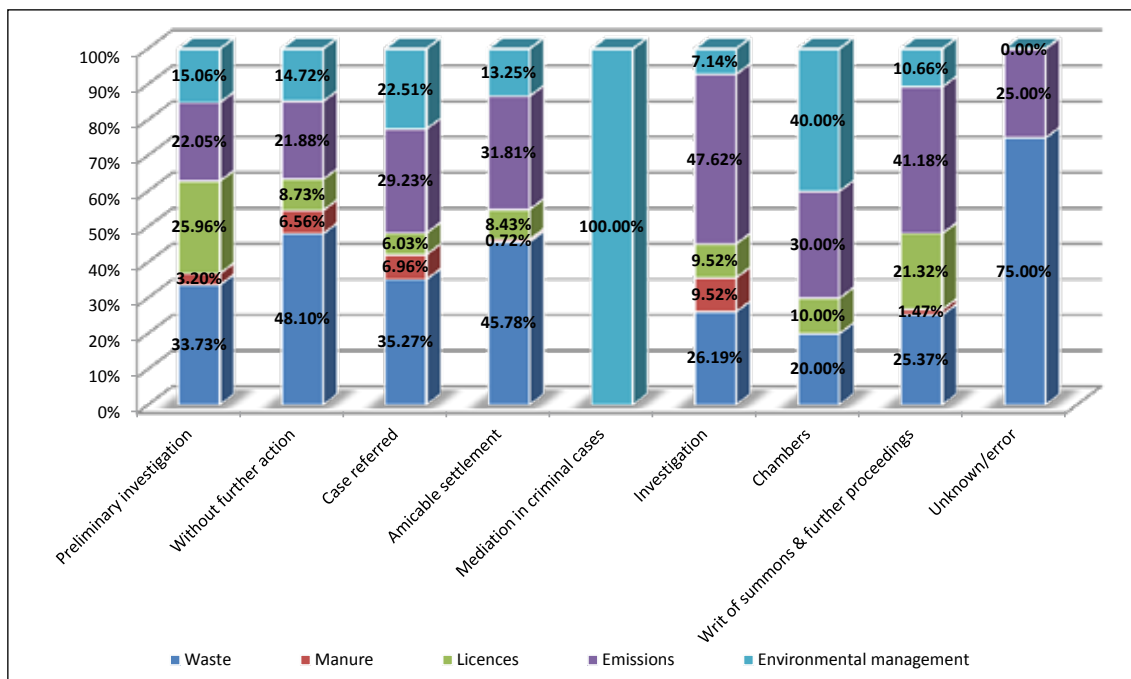
was the case with only 3 public prosecutor's offices in 2009. Only the public prosecutor's offices of Ghent, Oudenaarde, Veurne, Antwerp and Hasselt dismissed less than half of the environmental enforcement cases they recorded in 2010. However, on 10 January 2011 Oudenaarde still had the largest percentage of cases in the stage of preliminary investigation, namely 41.84% of all the environmental enforcement cases recorded in 2010. In addition, not one single writ of summons had been issued for a case in Oudenaarde. On 10 January 2011, the Brussels public prosecutor's office had not issued any writ of summons for environmental enforcement cases recorded in 2010 either. On the other hand, the Brussels public prosecutor's office had the largest percentage of cases without further action. Ghent issued the highest percentage of writs of summons. On 10 January 2011, a writ of summons was already issued in 11.45% of the environmental enforcement cases recorded in Ghent in 2010. In 2009, this was 7.60%. These regional differences require further examination. However, it can be assumed that greater uniformity will be achieved in the prosecution policy as a result of the different partnerships between the various Flemish public prosecutor's offices that have been and are still being set up and the announced scale increase between the public prosecutor's offices. Such greater uniformity could possibly blur these regional differences.

Regional differences can still be observed in terms of real figures. An average of 455 environmental enforcement cases was recorded per public prosecutor's office. However, in 2010, the public prosecutor's office of Veurne recorded the smallest number of environmental enforcement cases, namely 137 cases, whereas the Ghent public prosecutor's office recorded 901 such cases.

Generally speaking, it can be said that, as at 10 January 2011, at least 20.61% of all the cases recorded in 2010 were still in the preliminary investigation stage, whereas in at least 27.08% of the cases it had been decided that no further action would be taken.

However, it should also be pointed out that since 1 January 2008 most of the cases for leper referring to environmental health and nature protection law have been processed by the public prosecutor's office of Kortrijk. This is the result of a cooperation agreement between both public prosecutor's offices in the areas of environment/urban development (Kortrijk), on the one hand, and hormones/food safety (leper) on the other. An exception to this are 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.). These therefore continue to fall under the public prosecutor's offices that are competent for each area. The relevant codes for these 'liveability offences' are 63B, 63M, 64C and 64E. Since 1 November 2010, this cooperation agreement has also been extended to the whole province of West Flanders. As a result, all the cases with charge codes 63A, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M and 64N of the leper, Bruges and Veurne districts are processed by the public prosecutor's office of Kortrijk. Some of the decisions in the districts concerned were thus taken by magistrates associated with the public prosecutor's office of Kortrijk.

The graph below reflects, per state of progress, the share of the different categories of charge codes (waste, manure, licences, emissions and nature protection). The cases relating to waste, manure, licences, emissions and nature protection 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).



*Graph 46 State of progress as at 10 January 2011 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 according to the share of the charge category (waste, manure, licences, emissions and nature protection)*

The above graph shows that almost half of all the cases in which no further action was taken referred to waste.

Almost 46% of all the cases for which an amicable settlement was proposed referred to waste and nearly 1/3 of these cases related to emissions.

The majority of the environmental enforcement cases recorded in 2010 and in which a writ of summons had been issued as at 10 January 2011 referred to emissions. This is 41.18% of all the cases that were in the state of progress 'writ of summons'. Only 1.47% of the cases in which a writ of summons was issued referred to manure.

The table below makes a comparison between 2009 and 2010, per state of progress of the share of the different categories of charge codes (waste, manure, licences, emissions and nature protection). The cases relating to waste, manure, licences, emissions and nature protection 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).

	Waste		Manure		Licences		Emissions		Nature Protection		Total
	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	
	Preliminary investigation	34.16%	33.73%	2.33%	3.20%	21.26%	25.96%	26.73%	22.05%	15.52%	
Without further action	51.51%	48.10%	3.53%	6.56%	9.52%	8.73%	23.12%	21.88%	12.32%	14.72%	100.00%
Case referred	42.05%	35.27%	5.61%	6.96%	3.74%	6.03%	36.45%	29.23%	12.15%	22.51%	100.00%
Amicable settlement	51.42%	45.78%	1.27%	0.72%	3.81%	8.43%	33.02%	31.81%	10.48%	13.25%	100.00%
Mediation in criminal cases	33.33%	0.00%	0.00%	0.00%	0.00%	0.00%	66.67%	0.00%	0.00%	100.00%	100.00%
Investigation	9.38%	26.19%	0.00%	9.52%	6.25%	9.52%	78.12%	47.62%	6.25%	7.14%	100.00%
Chambers	66.67%	20.00%	0.00%	0.00%	33.33%	10.00%	0.00%	30.00%	0.00%	40.00%	100.00%
Writ of summons & further proceedings	19.31%	25.37%	0.00%	1.47%	10.23%	21.32%	62.50%	41.18%	7.95%	10.66%	100.00%
Unknown / error	0.00%	75.00%	0.00%	0.00%	33.33%	0.00%	66.67%	25.00%	0.00%	0.00%	100.00%

Table 53

States of progress as at 10 January 2010 and 10 January 2011 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region between 1 May 2009 and 31 December 2009 and between 25 June 2009 and 13 December 2009 compared with 2010 per (percentage) share of the category of charges (waste, manure, licences, emissions and nature protection)

A comparison between the 2009 and 2010 data reveals that there is a slight increase in the percentage share of licence cases and a percentage decrease in the number of emission cases that are in the state of progress 'preliminary investigation'. The other categories of charges continue to maintain practically the same percentage share in the stage of preliminary investigation.

In the state of progress 'without further action' the percentage share of 'waste' and 'emissions' declined, whereas the percentage share of 'manure' and 'nature protection' rose.

In 2009, over 50% of the amicable settlements referred to waste. In 2010 as well, waste continued to be the subject of the majority of amicable settlements that were proposed, even though the percentage share decreased to 45.78%. On the other hand, the percentage share of licences and nature protection increased.

The majority of cases in which a writ of summons was issued in 2009 pertained to emissions, namely 62.50%. Yet, the percentage share of emissions fell strongly in 2010 to 41.18%, whereas the other categories of charges rose in terms of percentage. This could mean that in 2010 the criminal divisions of the prosecutor's offices issued a writ of summons for a larger variety of cases and did no longer focus on cases pertaining to emissions, even though the category 'emissions' continues to be the category in which the largest share of writs of summons was issued in 2010.

The table below gives a comparison in terms of percentage between the data from 2009 and 2010 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 2010 and 10 January 2011. 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 nature protection).

	Waste		Manure		Licences		Emissions		Nature Protection	
	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010
Preliminary investigation	29.31%	21.22%	30.23%	16.62%	60.93%	50.46%	34.94%	24.27%	43.80%	26.49%
Without further action	49.53%	62.86%	51.16%	70.77%	30.59%	35.25%	33.88%	50.03%	38.99%	53.81%
Case referred	6.92%	5.67%	13.95%	9.23%	2.06%	3.00%	9.14%	8.22%	6.58%	10.11%
Amicable settlement	12.46%	7.08%	4.66%	0.92%	3.08%	4.03%	12.19%	8.61%	8.35%	5.74%
Mediation in criminal cases	0.09%	0.00%	0.00%	0.00%	0.00%	0.00%	0.24%	0.00%	0.00%	0.10%
Investigation	0.23%	0.41%	0.00%	1.23%	0.51%	0.46%	2.93%	1.30%	0.51%	0.31%
Chambers	0.15%	0.07%	0.00%	0.00%	0.26%	0.12%	0.00%	0.20%	0.00%	0.42%
Writ of summons & further proceedings	1.31%	2.57%	0.00%	1.23%	2.31%	6.68%	6.45%	7.31%	1.77%	3.02%
Unknown / error	0.00%	0.11%	0.00%	0.00%	0.26%	0.00%	0.23%	0.07%	0.00%	0.00%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

*Table 54 Categories of charge codes (waste, manure, licences, emissions and nature protection) 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*

*between 1 May 2009 and 31 December 2009 and between 25 June 2009 and 31 December 2009 with respect to 2010 according to the share of the state of progress as at 10 January 2010 and 10 January 2011 respectively per category of charges*

Like the graph and table above, this table confirms that most cases in which no further action was taken referred to waste. This was even more the case in 2010. In 2009, it was decided in nearly half (49.53%) of all the cases relating to waste that no further action would be taken, whereas this even amounted to 62.86% in 2010. However, it is remarkable that these cases constitute the majority of cases recorded by the public prosecutor's offices, both in 2009 (43%) and in 2010 (42.12%). The percentage share of writs of summons within the category 'waste' also increased, however, from 1.31% in 2009 to 2.75% of all the cases regarding waste in which a writ of summons was issued. In 2010, a decrease could on the other hand be observed with respect to 2009 in the cases regarding waste that were in the stage of preliminary investigation, namely 29.31% in 2009 and 21.22% in 2010, and in cases for which an amicable settlement was proposed, namely 12.46% in 2009 and 7.08% in 2010.

A similar situation can be found for cases relating to manure. The percentage share of cases relating to manure in the preliminary investigation stage fell from 30.23% in 2009 to 16.62% in 2010. Yet, the share 'without further action' rose substantially from just over half of the cases regarding manure in 2009 to 70.77% in 2010. In contrast to 2009, writs of summons were indeed issued for cases relating to manure in 2010, but this share only amounted to 1.23% of the total number of cases relating to manure. However, the share of amicable settlements declined from almost 5% in 2009 to about 1% in 2010.

The majority of cases relating to licences were still in the preliminary investigation stage on the date of extraction, even though this share decreased from 60.93% in 2009 to just over 50% in 2010, among other things in favour of the percentage share of cases for which a writ of summons was issued. This share rose from 2.31% in 2009 to 6.68% in 2010.

More than half of the cases relating to air/water/soil/noise remained without further action, although the highest percentage of writs of summons was recorded for emissions in 2010 as well. This share even increased from 6.45% in 2009 to 7.31% in 2010. On the other hand, a lower percentage of amicable settlements were proposed in cases regarding emissions.

As for the cases relating to nature protection, the percentage share in the preliminary investigation stage decreased from 43.80% in 2009 to 26.48% in 2010. As opposed to that, the percentage share of cases for which no further action was taken increased from 38.99% in 2009 to 53.81% in 2010. Also, a lower percentage of amicable settlements were proposed for the cases relating to nature protection, although the share of writs of summons increased.

Whereas it can be observed that with respect to 2009 the percentage share of the environmental enforcement cases that are still in the investigation phase on the date of extraction declined in 2010, it can generally be concluded that for at least 35% and at most 70.77% of the cases regarding environmental enforcement no further action was taken or they were dismissed. This is considerably more than the minimum and maximum of 2009, which were 30% and 50% respectively. In the next section we will therefore pay more attention to the reasons for these dismissals.

**NOTE:**

For the purposes of the analysis above all environmental enforcement cases in which no further action was taken and which were therefore dismissed by the public prosecutor's offices in the Flemish Region

were added up. It was indeed mentioned that 55.05% of the cases relating to environmental enforcement 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 must take into account 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 action is 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 2010 these would amount to 4,556 prosecutable cases, instead of 6,367. This way, the results of the calculations would be that an amicable settlement was proposed in 9.11% of the recorded cases instead of 6.52% as stated above, and that a writ of summons was issued in 5.97% of the cases instead of 4.27%.

But this line of thinking can be taken even further. If 'other dismissals' (administrative fine, Praetorian probation, signalling of the offender) and 'dismissals based on the principle of opportunity where it could be demonstrated that the situation had been regularised' are left out of consideration (see below), the number of prosecutable cases is lower and the percentages for both amicable settlements and writs of summons issued are higher for environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region in 2010. The total then amounts to 3,242 cases, with the percentages of cases in which an amicable settlement was proposed and cases in which a writ of summons was issued being 12.80% and 8.39%, respectively. Compared to 2009, this is a decrease of the percentage of proposed amicable settlements, but an increase in the percentage of writs of summons. The number of amicable settlements decreased by 3.74 percentage points (from 16.54% in 2009 to 12.80% in 2010) and the number of writs of summons issued rose by 3.77 percentage points (from 4.62% in 2009 to 8.39% in 2010).

#### **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 2011 55.05% 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 must 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 2011. The figures received from the Environmental Enforcement Report 2009 allow us to make a comparison in terms of percentage between the share of the different types of ‘without further action’ and the total number of cases that remained without further action in 2009 and 2010.

	Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in		Cases processed - without further action				Dismissals based on the principle of opportunity				Technical dismissals				Dismissals for other reasons				Unknown/error			
	2009	2010	2009		2010		2009		2010		2009		2010		2009		2010		2009		2010	
			%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n
Flanders	3,023	6,367	41.35%	3,505	55.05%	1,108	31.61%	38.88%	1,380	39.37%	25.44%	1,016	28.99%	0.00%	1	0.03%						
Dendermonde	291	671	40.55%	439	65.42%	89	20.27%	27.12%	124	28.25%	54.24%	226	51.48%	0.00%	0	0.00%						
Ghent	406	901	26.11%	388	43.06%	71	18.30%	64.15%	252	64.95%	11.32%	65	16.75%	0.00%	0	0.00%						
Oudenaarde	96	282	27.08%	108	38.30%	29	26.85%	34.62%	38	35.19%	30.77%	41	37.96%	0.00%	0	0.00%						
Bruges	319	643	51.10%	392	60.96%	310	79.08%	17.18%	66	16.84%	0.00%	16	4.08%	0.00%	0	0.00%						
Ieper	103	182	43.69%	112	61.54%	24	21.43%	46.67%	50	44.64%	33.33%	38	33.93%	0.00%	0	0.00%						
Kortrijk	328	678	46.65%	408	60.18%	4	0.98	45.75%	266	65.20%	37.91%	137	33.58%	0.00%	1	0.25%						
Veurne	88	137	29.55%	59	43.07%	15	25.42%	50.00%	18	30.51%	26.92%	26	44.07%	0.00%	0	0.00%						
Antwerpen	250	550	30.00%	231	42.00%	92	39.83%	32.00%	54	23.38%	41.33%	85	36.80%	0.00%	0	0.00%						
Mechelen	104	245	44.23%	151	61.63%	48	31.79%	47.83%	68	45.03%	19.57%	35	23.18%	0.00%	0	0.00%						
Turnhout	262	531	50.00%	327	61.58%	67	20.49%	45.04%	108	33.03%	39.69%	152	46.48%	0.00%	0	0.00%						
Hasselt	160	287	49.38%	140	48.78%	52	37.14%	54.43%	64	45.71%	8.86%	24	17.14%	0.00%	0	0.00%						
Tongeren	228	419	50.44%	242	57.76%	88	36.36%	40.87%	91	37.60%	11.30%	63	26.03%	0.00%	0	0.00%						
Leuven	161	380	40.99%	197	51.84%	53	26.90%	62.12%	94	47.72%	18.18%	50	25.38%	0.00%	0	0.00%						
Brussels	227	461	44.49%	311	67.46%	166	53.38%	8.91%	87	27.97%	29.70%	58	18.65%	0.00%	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 2009 and 2010 and share of dismissals based on the principle of opportunity, technical dismissals and dismissals for other reasons (state of progress as at 10 January 2010 compared with state of progress as at 11 January 2011)



For the 6,367 environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region in 2010 it can be observed that 31.61% (1,108) of the cases in which no further action was taken were dismissed based on the principle of opportunity. Generally speaking, these were often dismissals due to the fact that the case had limited consequences for society (314 cases), or the situation had already been regularised (298 cases). In 2009, the share of dismissals based on the principle of opportunity with respect to the total number of cases for which no further action was taken was just a bit higher, namely 35.68%.

However, significant regional differences can be observed here. For instance, the public prosecutor's office of Bruges dismissed more than 48.21% of the total number of environmental enforcement cases recorded in 2010 on the basis of the principle of opportunity. In Kortrijk, on the other hand, only 0.59% of all the environmental enforcement cases recorded in 2010 were dismissed for opportunity-related reasons. These huge differences could point to the importance or the opportunity that was devoted to environmental cases in various public prosecutor's offices. However, it would be advisable to further examine these differences. Within this context attention can again be drawn to the fact that on 1 November 2010 a cooperation agreement was concluded between public prosecutor's offices in the province of West Flanders. As a result of this, the public prosecutor's office in Kortrijk processes (see above) from this date onwards all so-called 'A-list environmental offences' (these are all the environmental cases, with the exception of the so-called 'liveability offences' such as illegal dumping, waste incineration by private individuals, noise nuisance, river fishing and infringements of the Flemish Parliament Act on forests) of the other public prosecutor's offices in West Flanders (Bruges, Veurne and Ieper - in fact a similar partnership has already existed between the public prosecutor's offices of Ieper and Kortrijk since 1 January 2008).

In total, nearly 40% of all the environmental enforcement cases without further action were dismissed for technical reasons, which is 1,380 of the total of 3,505 cases for which no further action was taken in 2010. This percentage is similar to that of 2009. The reason for this was usually that insufficient proof could be provided (656 cases), or that the offenders were unknown (414 cases). Again, regional differences can be detected and the two extremes are once more the public prosecutor's offices of Kortrijk and Bruges. In 2010, the public prosecutor's office of Bruges dismissed only 16.84% of the environmental enforcement cases in which no further action was taken for technical reasons, whereas this percentage amounted to 65.20% with the public prosecutor's office of Kortrijk. Again, further examination may provide an explanation for this.

However, in this respect it must be pointed out that some of the cases that were dismissed for technical reasons could in fact be regarded as dismissals based on the principle of opportunity. 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.

In the Environmental Enforcement Report 2009 it could be observed that in 2009 (following the entry into effect of the Environmental Enforcement Act on 1 May 2009) already 25.44% of the cases in which no further action was taken or 10.13% of the total number of recorded environmental enforcement cases were dismissed for 'other reasons'. One of these other reasons is, besides Praetorian probation and signalling of the offender, the dismissal in view of the imposition of an administrative fine. Naturally it is important in the context of this Environmental Enforcement Act to examine whether the share of dismissals for other reasons - and therefore also the impact of the Environmental Enforcement Act and the choice given to public prosecutors through the Act to refer cases regarding environmental offences to the Environmental Enforcement, Environmental Damage and Crisis Management Division - has increased in 2010 with respect to 2009.

In total, 25.44% of all the environmental enforcement cases in Flanders in 2009 (following the entry into effect of the Environmental Enforcement Act) were dismissed for 'other reasons'. In 2010 this was 28.99%. It is precisely this type of dismissal for 'other reasons' which contains – besides Praetorian probation and signalling of the offender – the category of the administrative fine.

More specifically, it can be said that in 2009 (after the coming into force of the Environmental Enforcement Act) 23.92% of all the environmental enforcement cases in which no further action was taken were dismissed in view of the imposition of an administrative fine. In 2010 this was 27.82%. This is an increase of almost 5 percentage points. When looking at the total number of recorded environmental enforcement cases, 9.89% were dismissed in 2009 in view of the imposition of an administrative fine. In 2010 this was 15.31%. This could mean that in 2010 the public prosecutor's offices decided much more frequently to dismiss a case in view of the imposition of an administrative fine by the Environmental Enforcement, Environmental Damage and Crisis Management Division and that an increasing influence of the Environmental Enforcement Act can be observed and more cases are referred in view of the imposition of an administrative fine.

However, here as well regional differences can be observed. For instance, during the study period the public prosecutor's offices of Ghent, Bruges and Hasselt dismissed only 16.75% (65 cases), 4.08% (16 cases) and 17.14% (24 cases) respectively of all the cases in which no further action was taken for 'other reasons'. In Dendermonde on the other hand 226 cases were dismissed 'for other reasons' (51.48% of the total number of cases in which no further action was taken). In Veurne this amounted to 26 cases or 44.07% and in Turnhout to 152 cases or 46.48%. These last percentages are much higher than the average of 28.99%.

In the table below the reasons for dismissal are indicated for each of the categories of charge codes (waste, manure, licences, emissions and nature protection), and this both for 2009 and 2010, in percentages with respect to the total number of dismissed cases per category and in real figures for 2010. 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)		Nature Protection Law		Total						
	2009		2009		2009		2009		2009		2009						
	%	n	%	n	%	n	%	n	%	n	%	n					
Opportunity Dismissal	(1) Limited consequences for society	9.63%	148	8.78%	27.27%	22	9.57%	12	3.92%	10.03%	62	8.08%	70	13.57%	11.28%	314	8.96%
	(2) Situation regularised	6.99%	133	7.89%	2.27%	49	21.30%	48	15.69%	10.38%	43	5.61%	25	4.84%	8.00%	298	8.50%
	(3) Relational offence	0.31%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.24%	0	0.00%
	(4) Limited detriment	0.47%	5	0.30%	0.00%	4	1.74%	0	0.00%	0.35%	2	0.26%	20	3.88%	0.56%	31	0.88%
	(5) Reasonable term exceeded	4.04%	8	0.47%	0.00%	0	0.00%	0	0.00%	1.04%	2	0.26%	1	0.19%	3.20%	11	0.31%
	(6) Lack of precedent	2.48%	37	2.19%	0.00%	2	0.87%	3	0.98%	2.08%	13	1.69%	29	5.62%	2.72%	84	2.40%
	(7) Chance events with cause	4.35%	44	2.61%	2.27%	6	2.61%	6	1.96%	8.30%	54	7.04%	4	0.78%	4.72%	114	3.25%
	(9) Disproportion criminal proceedings - social disruption	1.09%	40	2.37%	0.00%	1	0.43%	3	0.98%	5.54%	13	1.69%	17	3.29%	1.92%	74	2.11%
	(10) Victim's attitude	0.16%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.08%	0	0.00%
	(11) Compensation to the victim	0.78%	35	2.08%	0.00%	0	0.00%	0	0.00%	0.35%	1	0.13%	2	0.39%	0.48%	38	1.08%
	(12) Insufficient investigation capacity	0.47%	6	0.36%	0.00%	0	0.00%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.24%	11	0.31%
	(13) Other priorities	1.86%	53	3.14%	0.00%	16	6.96%	12	3.92%	3.11%	26	3.39%	26	5.04%	2.24%	133	3.79%
	<b>Total category</b>	<b>32.61%</b>	<b>509</b>	<b>30.19%</b>	<b>31.82%</b>	<b>100</b>	<b>43.48%</b>	<b>34.45%</b>	<b>84</b>	<b>27.45%</b>	<b>41.18%</b>	<b>216</b>	<b>28.16%</b>	<b>199</b>	<b>38.57%</b>	<b>35.68%</b>	<b>1,108</b>
Technical Dismissal	(15) No offence	3.88%	73	4.33%	2.27%	22	9.52%	12	3.92%	16.26%	137	17.86%	22	4.26%	7.20%	266	7.59%
	(16) Insufficient evidence	24.22%	431	25.56%	0.00%	3	1.30%	26	8.50%	20.42%	131	17.08%	65	12.60%	18.96%	656	18.72%
	(17) Limitation	0.00%	6	0.36%	0.00%	0	0.00%	1	0.33%	0.00%	15	1.96%	1	0.19%	0.00%	23	0.66%
	(18) Death of the offender	0.16%	4	0.24%	0.00%	0	0.00%	0	0.00%	0.00%	0	0.00%	1	0.19%	0.08%	5	0.14%
	(21) Incompetence	0.00%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.00%	3	0.39%	0	0.00%	0.08%	3	0.09%
	(22) Final judgement	0.00%	1	0.06%	0.00%	0	0.00%	0	0.65%	0.35%	5	0.65%	0	0.00%	0.24%	8	0.23%
	(23) Immunity	0.00%	0	0.00%	0.00%	0	0.00%	0	0.98%	0.00%	1	0.13%	0	0.00%	0.00%	4	0.11%
	(24) Absolution due to extenuating circumstances	0.00%	1	0.06%	0.00%	0	0.00%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.00%	1	0.03%
	(26) Offender(s) unknown	13.98%	207	12.28%	0.00%	2	0.87%	11	3.59%	13.15%	115	14.99%	79	15.31%	12.32%	414	11.81%
	<b>Total category</b>	<b>42.24%</b>	<b>723</b>	<b>42.88%</b>	<b>2.27%</b>	<b>27</b>	<b>11.74%</b>	<b>55</b>	<b>17.97%</b>	<b>50.17%</b>	<b>407</b>	<b>53.06%</b>	<b>168</b>	<b>32.56%</b>	<b>38.88%</b>	<b>1,380</b>	<b>39.37%</b>
Other	(28) Administrative fine	22.20%	418	24.79%	65.91%	103	44.78%	166	54.25%	8.65%	140	18.25%	148	28.68%	23.92%	975	27.82%
	(29) Praetorian probation	0.31%	1	0.06%	0.00%	0	0.00%	1	0.33%	0.00%	0	0.00%	0	0.00%	0.16%	2	0.06%
	(30) Signalling of the offender	2.64%	34	2.02%	0.00%	0	0.00%	0	0.00%	0.00%	4	0.52%	1	0.19%	1.36%	39	1.11%
<b>Total category</b>	<b>25.16%</b>	<b>453</b>	<b>26.87%</b>	<b>65.91%</b>	<b>103</b>	<b>44.78%</b>	<b>167</b>	<b>54.58%</b>	<b>8.65%</b>	<b>144</b>	<b>18.77%</b>	<b>149</b>	<b>28.88%</b>	<b>25.44%</b>	<b>1,016</b>	<b>28.99%</b>	
Unknown / error	0.00%	1	0.06%	0.00%	0	0.00%	0	0.00%	0.00%	0	0.00%	0	0.00%	0.00%	1	0.03%	
<b>Total category</b>	<b>0.00%</b>	<b>1</b>	<b>0.06%</b>	<b>0.00%</b>	<b>0</b>	<b>0.00%</b>	<b>0</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0</b>	<b>0.00%</b>	<b>0</b>	<b>0.00%</b>	<b>0.00%</b>	<b>1</b>	<b>0.03%</b>	
<b>Total</b>	<b>100.00%</b>	<b>1,686</b>	<b>100.00%</b>	<b>100.00%</b>	<b>230</b>	<b>100.00%</b>	<b>306</b>	<b>100.00%</b>	<b>100.00%</b>	<b>767</b>	<b>100.00%</b>	<b>516</b>	<b>100.00%</b>	<b>100.00%</b>	<b>3,505</b>	<b>100.00%</b>	

Table 56 Per category of charge codes, environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010 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 with the share in 2009 (state of progress as at 10 January 2010)

In total, 55.05% of the recorded cases in 2010 were dismissed. This is 3,505 of the 6,367 cases. 31.61% were dismissed on the basis of the principle of opportunity. The two main principles of opportunity were the limited consequences for society and the regularised situation. 39.37% or 1,380 cases were dismissed for technical reasons. The main reasons were insufficient evidence and unknown offenders. As already indicated earlier, almost 16% of all recorded cases were dismissed for 'other' reasons, the main reason being the imposition of an administrative fine (either to the AMMC, or to the Manure Bank). In 2010, for instance, 15.31% of the total number of recorded cases were dismissed in view of the imposition of an administrative fine. The decrease in the percentage share of dismissals on the basis of the principle of opportunity and the increase in the percentage share of 'other reasons' could indicate that these two categories of dismissal are 'communicating vessels'. One possible explanation for the fact that the number of dismissals on the basis of the principle of opportunity is clearly reduced could be that the prosecutors general, the AMMC and the VHRM (for instance in the Environmental Enforcement Report 2009) insist with the different Flemish environment magistrates to make the best possible use of the instruments in the Environmental Enforcement Act.

When looking specifically at the categories of charge codes of the environmental enforcement cases that are dismissed, the following can be concluded:

- ▶ -Waste: In 2010, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded a total of 2,682 cases relating to waste. 62.86% of these cases were dismissed. Out of these 1,686 dismissed cases, most cases were dismissed for lack of evidence (technical dismissal), namely 26.56% of the dismissed cases relating to waste. In addition, however, almost 25% or 418 cases were dismissed for the fact that they were referred to the body that is competent for the imposition of an administrative fine. This is a slight increase compared to 2009. What is remarkable is the fact that of all the cases that were referred for the imposition of an administrative fine 42.87% were related to waste.
- ▶ Manure: In 2010, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 325 cases relating to manure. 70.77% of these cases were dismissed, mainly on the basis of the principle of opportunity and in view of the imposition of an administrative fine. 49 cases were dismissed because the situation was regularised (principle of opportunity) and 103 cases were dismissed in view of the imposition of an administrative fine. Only 11.74% of the dismissed cases relating to manure were dismissed for technical reasons. Of all the cases that were dismissed in view of the imposition of an administrative fine 10.56% related to manure.
- ▶ -Licences: In 2010, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded a total of 868 cases relating to licences. 306 of these cases, or 35.25%, were dismissed. It is remarkable that over half (54.25% or 166 cases) of the dismissed cases were dismissed in view of the imposition of an administrative fine. In addition, almost 16% were dismissed because the situation was regularised (principle of opportunity). Of all the cases that were dismissed in view of the imposition of an administrative fine 17.03% related to licences.
- ▶ Emissions: In 2010, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 1,533 cases relating to air/water/soil/noise. Over 50% of these cases were dismissed. In over half of the dismissed cases the reasons related to technical aspects, such as for instance the fact that no offence had been committed (137 cases), insufficient evidence was available (131 cases) or the offenders were unknown (115 cases). 28.16% of the dismissed cases were dismissed on the basis of the principle of opportunity, such as 'limited consequences for society' (62 cases) and 'chance events with cause' (54 cases). Only 18.25% were dismissed in view of the imposition of an administrative fine. Since this still involved 140 cases, it can be established that of all the cases that were referred for the imposition of an administrative fine 14.36% related to emissions.

- ▶ Nature protection law: In 2010, the criminal divisions of the public prosecutor's offices in the Flemish Region recorded a total of 959 cases relating to nature protection law. 516, or 53.81%, of these cases were dismissed, mostly on the basis of the principle of opportunity. 70 cases were dismissed for reasons of limited consequences for society and 29 for reasons of lack of precedent. 32.56% of the dismissed cases were dismissed for technical reasons, mainly because the offenders were unknown or insufficient evidence was available. 26.68% of the dismissed cases were dismissed in view of the imposition of an administrative fine. Since this involved 148 cases, it can be concluded that of all the cases that were referred for the imposition of an administrative fine 15.18% related to emissions.

In comparison to 2009 it can be observed that the percentage share of the cases that are dismissed on the basis of the principle of opportunity declined in 2010, namely from 35.68% of the total number of dismissed cases in 2009 to 31.61%. The percentage share of those cases that were dismissed in view of the imposition of an administrative fine on the other hand increased. In fact, in 2009 this number amounted to 23.92% of all the dismissed cases, whereas in 2010 this was no less than 27.82%.

From the figures above it shows that cases are still being dismissed, but that at least the use of the alternative of the administrative fine seems to be increasing. This could mean that the Environmental Enforcement Act is successful. Naturally, a real insight into the effects of the Environmental Enforcement Act on the activities of the environmental enforcement actors can only be provided after a number of years. Still, the trend that is revealed from the figures above can be regarded as positive. However, in the Environmental Enforcement Report 2009 huge regional differences could be observed. In 2010 as well, this regional diversity can be derived from the figures, even though the difference between the minimum and maximum percentages seems to have slightly levelled off. In 2009, for instance, it could be established that the public prosecutor's office of Bruges did not refer any cases to the Environmental Enforcement, Environmental Damage and Crisis Management Division, whereas the public prosecutor's office of Dendermonde dismissed 54.24% of the cases for 'other reasons', including the administrative fine. In 2010, the public prosecutor's office of Bruges dismissed 4.08% cases for 'other reasons' and the public prosecutor's office of Dendermonde no less than 51.48%. The fact that important differences still exist between the public prosecutor's offices when it comes to the prosecution of environmental breaches should continue to be given further attention, because this could put at risk the uniformity in the prosecution of environmental breaches. For this reason it is again important to further examine which of the cases that are dismissed by the public prosecutor's offices on the basis of the principle of opportunity may still be eligible for administrative processing by the Environmental Enforcement, Environmental Damage and Crisis Management Division. The reason is that it is important that each offence is processed in the appropriate manner. Within this framework it could be considered to have those cases that are dismissed for reasons of other priorities (no less than 133 cases in total, or nearly 4% of all the dismissed cases) fined as much as possible by the Environmental Enforcement, Environmental Damage and Crisis Management Division. In addition, some of the cases in which the 'situation was regularised', there was a 'lack of precedent', 'the victim was compensated', and there were 'limited consequences for society' are cases that would probably also be eligible for the imposition of an administrative fine.

The large regional differences and the possibility of imposing an administrative fine for even a larger number of cases that are dismissed on the basis of the principle of opportunity imply that the positive trend which is currently already visible can be further strengthened in the future.

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.

## 4.2 Evaluation of the administrative sanctions policy

### 4.2.1 Evaluation of the sanctions policy pursued by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy

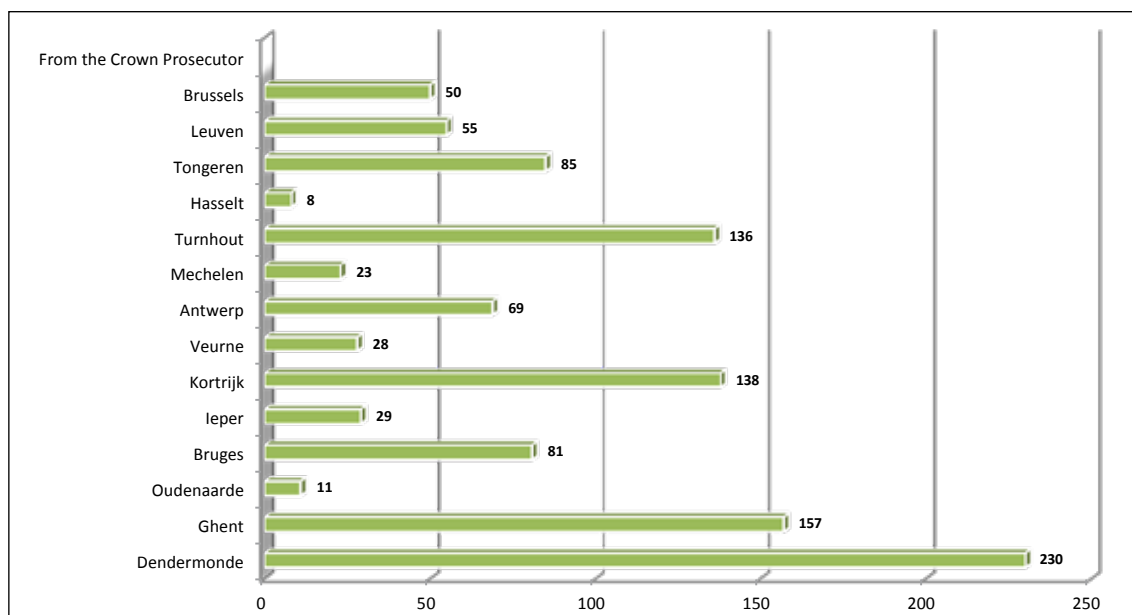
DABM stipulates that exclusive and alternative administrative fines shall be imposed by the regional body that was assigned to that end by the Government of Flanders, namely the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy (Afdeling Milieuhandhaving, Milieuschade en Crisisbeheer or AMMC). 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 2010.

4.2.1.1 The AMMC started its activities at the beginning of May 2009. Consequently, the figures below only indicate a first trend about the effects of the Environmental Enforcement Act within the framework of the imposition of administrative fines.

#### Processing of environmental offences

In the framework of the processing of environmental offences by the AMMC in 2010 it was asked how many official reports the AMMC received from which public prosecutor's office.

The graph below therefore indicates how many cases the AMMC received from each public prosecutor's office in the Flemish Region.



Graph 47

*Official reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy from public prosecutor's offices in the Flemish Region in 2010*

In total, the Environmental Enforcement, Environmental Damage and Crisis Management Division recei-

ved 1,100 official reports in view of the imposition of alternative administrative fines.

The graph above confirms that there are regional differences in the number of cases referred to the AMMC by the public prosecutor's offices. Public prosecutor's offices that stand out (positively) are those of Turnhout, Kortrijk, Ghent, and Dendermonde. These public prosecutor's offices have again made good use of the possibilities offered by the Environmental Enforcement Act in 2010.

A positive element is that each public prosecutor's office referred at least 8 cases to the AMMC in 2010. The possibility of referring cases to the AMMC has been discussed several times between the AMMC and the public prosecutor's offices. In its Environmental Enforcement Report 2009 the Flemish High Council of Environmental Enforcement explicitly drew attention to this possibility and the figures showed that there was most definitely room for referring even more cases to the AMMC (for instance certain dismissals on the basis of the principle of opportunity). This is probably the reason why this possibility of imposing an administrative sanction is even more widely known and used by the various public prosecutor's offices.

It could be derived from the figures above that almost 17.28% of the official reports on environmental enforcement that were recorded with the public prosecutor's offices in 2010 (a total of 6,367 cases) were already referred to the AMMC in view of the imposition of an administrative fine (a total of 1,100 official reports). However, the figures reveal a certain discrepancy (see below). Therefore, as there is (some) distortion in the figures to be compared, this section will primarily be based on the figures the Flemish High Council of Environmental Enforcement received from the Environmental Enforcement, Environmental Damage and Crisis Management Division.

The table below indicates the number of cases received by the Environmental Enforcement, Environmental Damage and Crisis Management Division from the public prosecutor's offices in 2010. It also shows the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2010. This allows us to calculate the percentage of cases which each of the public prosecutor's offices refers to the Environmental Enforcement, Environmental Damage and Crisis Management Division.

	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
Flanders	1,100	6,367	17.28%
Dendermonde	230	671	34.28%
Ghent	157	901	17.43%
Oudenaarde	11	282	3.90%
Bruges	81	643	12.60%
Ieper	29	182	15.93%
Kortrijk	138	678	20.35%
Veurne	28	182	15.38%
Antwerp	69	550	12.55%
Mechelen	23	245	9.39%
Turnhout	136	531	25.61%
Hasselt	8	287	2.79%
Tongeren	85	419	20.29%
Leuven	55	380	14.47%
Brussels	50	461	10.85%

*Table 57 Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2010 and referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy*

The table above clearly shows that over 17% of all environmental enforcement cases recorded by the public prosecutor's offices during the study period were referred to the AMMC in view of the imposition of an alternative administrative fine. This seems to be a positive evolution for the possibilities offered by the Environmental Enforcement Act for administrative processing.

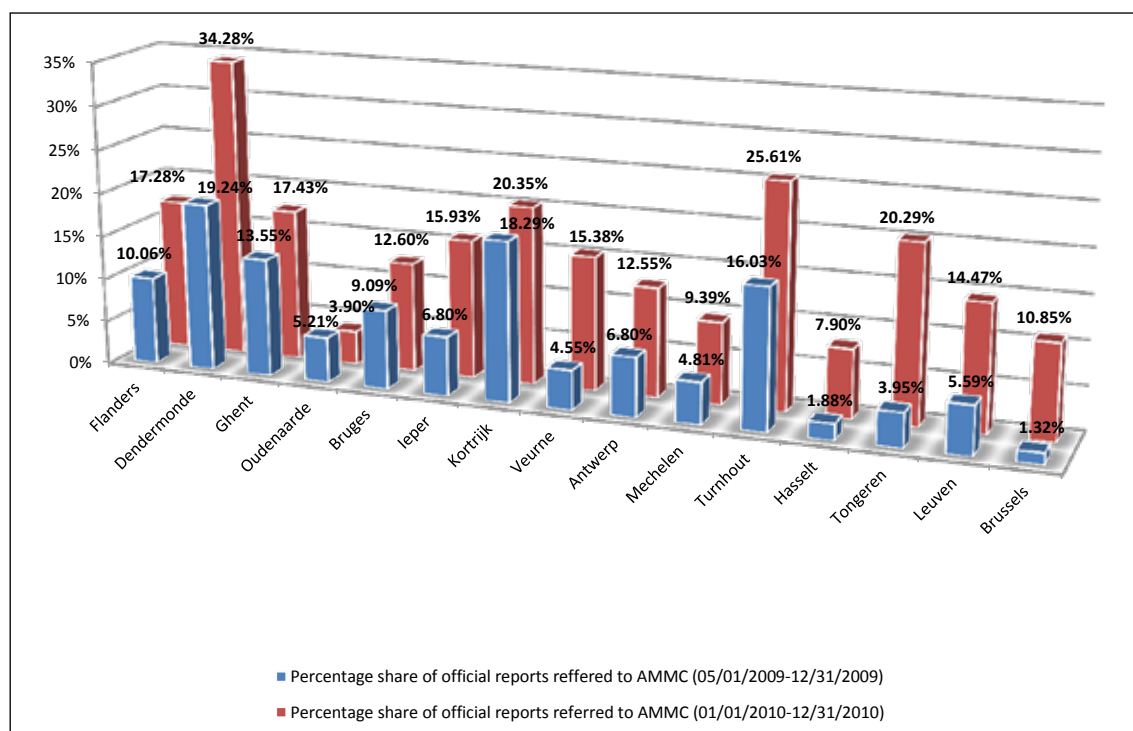
Here as well, there are regional differences. For instance, the public prosecutor's office of Dendermonde referred nearly 1/3 of all the environmental enforcement cases to the AMMC in view of the imposition of an alternative administrative fine, whereas in Hasselt this occurred in only 1.32% of all the environmental enforcement cases.

Even so, on the whole it can be concluded that, on average, the public prosecutor's offices in the Flemish Region were clearly already using the possibility of referring environmental offences to the AMMC in 2010. In 4.1.3 'Reasons for dismissal' it was also indicated that cases were being dismissed with a view to the imposition of an administrative fine to the disadvantage of cases that were dismissed for technical and opportunity-related reasons. This can only be encouraged, because this was exactly the reason why the legislator created the possibility of administrative sanctions.

On the basis of the figures from the Environmental Enforcement Report 2009 a comparison can be made, in terms of percentage, between 2009 and 2010, of the number of cases which the AMMC received from the public prosecutor's offices in the Flemish Region. Since the figures used from the Environmental Enforcement Report 2009 again cover the period following the coming into force of the Environmental Enforcement Act (1 May 2009 to 31 December 2009), it is impossible to compare concrete numbers. The table and graph below indicate, for each public prosecutor's office, the percentage share of cases which the public prosecutor's offices received and referred to the AMMC in the period from 1 May 2009 through 31 December 2009 and from 1 January 2010 through 31 December 2010, on the basis of the figures provided



by the AMMC.



**Graph 48** Percentage share of cases received by the public prosecutor's offices in the Flemish Region and referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in the period from 1 May 2009 through 31 December 2009 and from 1 January 2010 through 31 December 2010

	Percentage share of official reports referred to the AMMC (1/5/2009-31/12/2009)	Percentage share of official reports referred to the AMMC (1/1/2010-31/12/2010)
Flanders	10.06%	17.28%
Dendermonde	19.24%	34.28%
Ghent	13.55%	17.43%
Oudenaarde	5.21%	3.90%
Bruges	9.09%	12.60%
Ieper	6.80%	15.93%
Kortrijk	18.29%	20.35%
Veurne	4.55%	15.38%
Antwerp	6.80%	12.55%
Mechelen	4.81%	9.39%
Turnhout	16.03%	25.61%
Hasselt	1.88%	2.79%
Tongeren	3.95%	20.29%
Leuven	5.59%	14.47%
Brussels	1.32%	10.85%

**Table 58** Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2010 and referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and

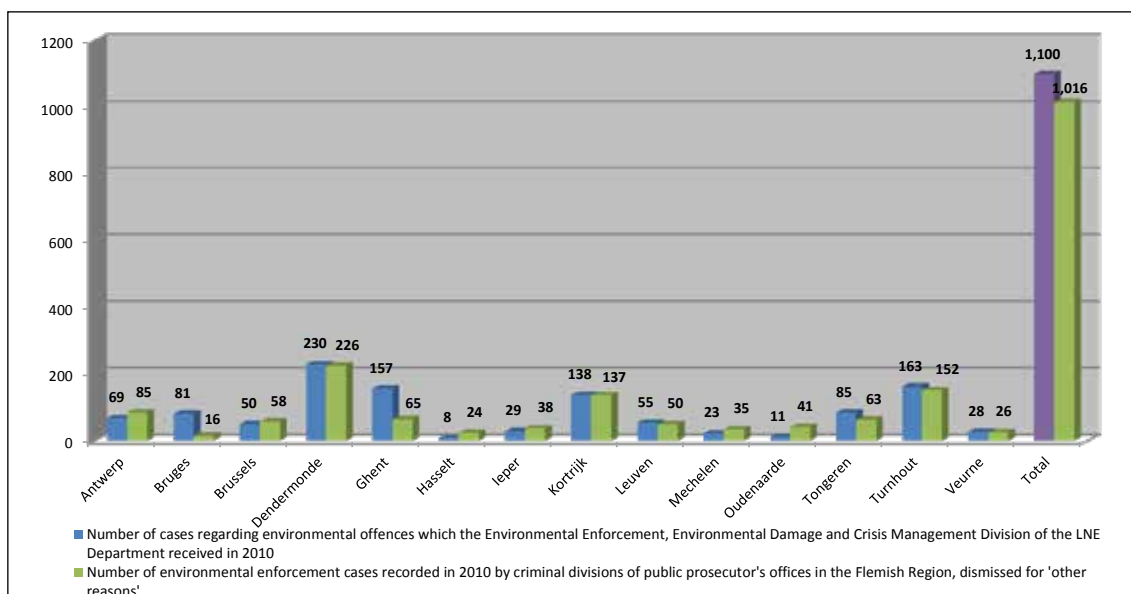
*Energy. States of progress as at 10 January 2010 and 10 January 2011 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region between 1 May 2009 and 31 December 2009 and between 25 June 2009 and 13 December 2009 compared with 2010 per (percentage) share of the category of charges (waste, manure, licences, emissions and nature protection )*

As indicated earlier, the percentage share of official reports referred to the AMMC in 2010 rose by 7 percentage points compared to 2009. This can be considered a positive evolution, since it means that in 2010 a growing number of cases were referred to the AMMC in view of the imposition of an administrative fine, which was precisely one of the objectives of the Environmental Enforcement Act. Moreover, it implies that the public prosecutor's offices can spend more time on the more important cases, while each environmental offence can still be processed in an appropriate manner. As indicated earlier, however, there is still room for an increase in the percentage of cases that are referred to the AMMC. For instance, some cases that are currently dismissed for opportunity-related reasons could possibly be referred to the AMMC. For this reason, this percentage may be expected to increase.

Not only is there still room for referring more cases, there is certainly also a growth margin when considering the separate public prosecutor's offices. The table above illustrates that a higher percentage can be recorded in most public prosecutor's offices, but that the degree of the increase differs. With the public prosecutor's office of Oudenaarde a decline is even recorded. Also, the percentage of cases that are referred to the AMMC differs greatly. For instance, the public prosecutor's office of Dendermonde referred 34.28% of its recorded environmental enforcement cases to the AMMC in 2010, whereas in 2009 this amounted to 19.24%. The public prosecutor's office of Hasselt, on the other hand, only referred 2.79% of its cases to the AMMC in 2010 in view of the imposition of an administrative fine. This is an increase compared to 2009, be it only of one percentage point.

#### **Note**

The figures above referring to the number of cases submitted by the public prosecutor's offices and received by the Environmental Enforcement, Environmental Damage and Crisis Management Division 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 2010 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 49** *Number of environmental enforcement cases dismissed for 'other reasons' in 2010 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 Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in 2010*

In the first instance it must be said that the figures of the public prosecutor's offices are an overestimation, since the data above pertain to cases that were dismissed for other reasons. These 'other reasons' do not just 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. Moreover, the referral in view of the imposition of an administrative fine may imply that the case was referred to either the Environmental Enforcement, Environmental Damage and Crisis Management Division, 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 last state of progress on 10 January 2011, on the other (see above). The figures the VHRM received from the AMMC, however, refer to the exact period from 1 January 2010 to 31 December 2010. Therefore, there is a real possibility that between 1 and 10 January 2011 there were decisions to refer cases in view of the imposition of an administrative fine, and that these cases were not counted by the AMMC as it only received them in 2011. This could even have occurred in cases which the public prosecutor's offices submitted to the AMMC in view of the imposition of an alternative administrative fine at the end of December 2010.

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 might, in part, be explained by the following causes:

- ▶ the selection of cases by the public prosecutor's offices was made based on a specific list of charge codes, drawn up in consultation with the VHRM. From the moment a case was assign-

ned 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 based on 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 view 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 infringement) 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 (and logical) 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. In fact, this is the case with the public prosecutor's offices of Antwerp, Brussels, Hasselt, Leper, Mechelen and Oudenaarde. 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).

Contrary to the Environmental Enforcement Report 2009, the present report also includes more specific data regarding the origin and theme of the cases referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division. For instance, the table below gives for each public prosecutor's office and for the Flemish Region as a whole 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																	
	Agency for Roads and Traffic		Federal police		Local police		Municipal super-visors		Environ-mental Inspec-tor-ate Divi-sion		Agency for Nature and Forests		OVAM		Provincial super-visors		VLM (Flemish Land Agency)	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Flanders	26	2.36	15	1.36	499	45.36	20	1.81	160	14.54	317	28.81	17	1.54	0	0.18	44	4
Dendermonde	23	10	3	1.30	125	54.35	6	2.61	23	10	45	19.56	2	0.87	0	0	3	1.30
Ghent	3	1.91	4	2.55	114	72.61	6	3.82	3	1.91	24	15.29	0	0	0	0	3	1.91
Oudenaarde	0	0	0	0	2	18.18	0	0	5	45.45	2	18.18	1	9.09	0	0	1	9.09
Bruges	0	0	0	0	3	3.70	2	2.47	5	6.17	59	72.84	0	0	0	0	12	14.81
Ieper	0	0	0	0	14	48.88	0	0	2	6.90	9	31.03	0	0	0	0	4	13.79
Kortrijk	0	0	6	4.35	87	63.04	1	0.72	15	10.87	16	11.59	6	4.35	0	0	5	3.62
Veurne	0	0	0	0	12	42.86	1	3.57	0	0	8	28.57	0	0	0	0	7	25
Antwerp	0	0	2	2.90	29	42.03	1	1.45	17	24.64	16	23.19	2	2.90	0	0	2	2.90
Mechelen	0	0	0	0	2	8.70	1	4.95	5	21.79	12	52.19	3	13.04	0	0	0	0
Turnhout	0	0	0	0	97	71.32	0	0	18	13.23	14	10.29	0	0	0	0	7	5.15
Hasselt	0	0	0	0	1	12.50	0	0	5	62.50	2	25	0	0	0	0	0	0
Tongeren	0	0	0	0	12	14.12	1	1.12	8	9.41	62	72.94	2	2.35	0	0	0	0
Leuven	0	0	0	0	0	0	0	0	30	54.54	25	45.45	0	0	0	0	0	0
Brussels	0	0	0	0	1	2	1	2	24	48	23	46	1	2	0	0	0	0

Table 59 Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2010, per enforcement actor

The table above shows that the AMMC is said to have received a total of 1,098 cases. However, this does not correspond with the 1,100 cases indicated in the tables above. This can be explained by the fact that in 2010 the AMMC also received two official reports that were drawn up for violations against the Decree on banks by special forestry officials who were sworn in by the provincial administration of West Flanders. These were thus not the provincial supervisors within the framework of DABM, but those within the framework of the farm legislation. As indicated in Chapter 2, no provincial supervisors had been appointed yet in 2010.

More than 45% of the cases received by the AMMC in 2010 originate from the local police. In real numbers this involved 499 cases. Also, nearly 30% of the official reports that were referred to the AMMC in view of the imposition of an administrative fine were drawn up by the Agency for Nature and Forests. In reality, it concerned 317 cases. Only 1.36%, 1.54% and 1.81% of the 1,098 official reports were drawn up by the federal police, OVAM and the municipal supervisors respectively. This shows that nearly half of the cases which the AMMC received in 2010 originated from the local police.

When looking separately at the different public prosecutor's offices, it becomes clear that not with all the public prosecutor's offices the majority of the cases that were referred in view of the imposition of an administrative fine originated from the local police. The majority of the cases of Oudenaarde, Hasselt, Leuven and Brussels originate from the Environmental Inspectorate Division and amount to respectively 45.45%, 62.50%, 54.54% and 48%. The public prosecutor's offices of Bruges, Mechelen and Tongeren mainly referred official reports from the Agency for Nature and Forests in view of the imposition of an administrative fine, namely respectively 72.84%, 52.19% and 72.94% of the cases which the AMMC received from these public prosecutor's offices. With the other public prosecutor's offices the predominance of the local police cases referred to the AMMC is definitely clear.

The following table gives an overview of the topics of the cases which the AMMC received in 2010. At the request of the Flemish High Council of Environmental Enforcement the same breakdown was used as the one that was applied in the Environmental Enforcement Report 2009 for the data from the public prosecutor's offices.

	Environmental topic											
	Nature Protection		Air, Water, Soil and Noise		Licences		Manure		Waste			
	n	%	n	%	n	%	n	%	n	%		
Flanders	320	29.09	151	13.73	115	10.45	44	4	470	42.73		
Dendermonde	44	19.13	25	10.87	24	10.43	4	1.74	133	57.83		
Ghent	26	16.56	6	3.82	9	5.73	3	1.91	113	71.97		
Oudenaarde	2	18.18	4	36.30	3	27.27	1	9.09	1	9.09		
Bruges	61	75.31	3	3.70	3	3.70	11	13.58	3	3.70		
Ypres	11	37.93	6	20.69	2	6.09	4	13.79	6	20.69		
Kortrijk	20	14.49	28	20.29	16	11.59	4	2.90	70	50.72		
Veurne	9	32.14	0	0	1	3.57	7	25	11	39.29		
Antwerp	16	23.19	22	31.88	15	21.74	3	4.35	13	18.84		
Mechelen	13	56.52	4	17.39	1	4.35	0	0	5	21.74		
Turnhout	15	11.03	26	19.12	13	9.56	7	5.15	75	55.15		
Hasselt	2	25	2	25	1	12.5	0	0	3	37.5		
Tongeren	54	63.53	6	7.06	3	3.53	0	0	22	25.88		
Leuven	25	45.45	9	16.36	16	29.09	0	0	5	9.09		
Brussels	22	44	10	20	8	16	0	0	10	20		

Table 60 Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2010, per environmental topic

The table above indicates that the majority of the dossiers which the AMMC received in 2010 related to waste, namely 42.73% of the 1,100 cases. This comes down to 470 official reports. The aforementioned figures from the public prosecutor's offices already revealed this conclusion, since the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 2,682 cases regarding waste in 2010 (42.12% of the total of recorded environmental enforcement cases in 2010) and 418 of these cases were referred in view of the imposition of an administrative fine.

Almost 30% of the cases from the AMMC pertained to nature protection, namely 320 official reports. What is remarkable is the fact that, in 2010, the criminal divisions of the public prosecutor's offices in the Flemish Region only referred 148 cases regarding nature protection in view of the imposition of an administrative fine. The reason for this discrepancy is not clear. A second remarkable fact is that the AMMC recorded 44 cases regarding manure in 2010, whereas the figures from the public prosecutor's offices indicated that 103 cases were referred in view of the imposition of an administrative fine. This can be explained by the fact that this dismissal code also includes the cases that were referred to the Manure Bank for the imposition of an administrative fine.

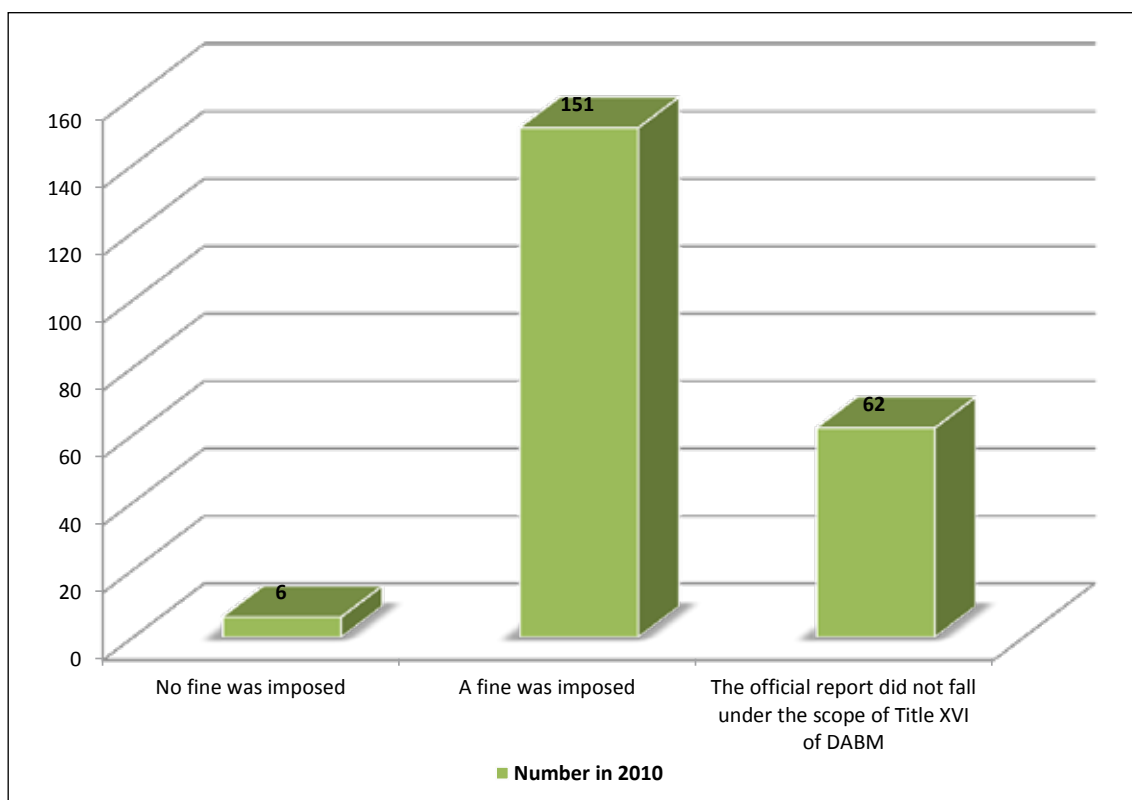
The aforementioned predominance of the cases regarding waste with the AMMC can also be found in a number of public prosecutor's offices which mainly referred cases regarding waste to the AMMC. It involves, more specifically, the public prosecutor's offices of Dendermonde, Ghent, Kortrijk, Veurne and Turnhout. The public prosecutor's offices of Bruges, Leper, Mechelen, Tongeren, Leuven, and Brussels mainly referred dossiers regarding nature protection to the AMMC in 2010. However, the public prosecutor's offices of Oudenaarde and Antwerp are an exception to this. They mainly referred cases regarding air/water/soil/noise in view of the imposition of an administrative fine. However, when looking at the real figures, it involves a limited number of cases, namely respectively 4 and 22 official reports.

The figures above indicate that in 2010 the AMMC received more official reports from the public prosecutor's offices than in 2009 and almost half of the official reports that were drawn up by the local police. A second conclusion that can be drawn from the above figures is that the AMMC mainly received cases with regard to waste (illegal dumping or waste incineration).

In 2009, the AMMC received 304 official reports. However, in 2009 no administrative fines were imposed yet by the AMMC. Now that it turns out that the number of cases that were referred to the AMMC increased in 2010, 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 regional body for the imposition of an administrative fine were quickly processed.



The table and graph below give an overview of the decisions taken by the AMMC in 2010.



*Graph 50 Decisions reached within the framework of alternative administrative fines by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in 2010*

Alternative administrative fine	Number in 2010
Official reports received by the AMMC from the public prosecutor's offices	1,100
Decisions reached within the framework of the alternative administrative fine	219
No fine was imposed.	6
A fine was imposed.	151
The official report did not fall under the scope of Title XVI of DABM	62

*Table 61 Decisions reached within the framework of alternative administrative fines by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in 2010*

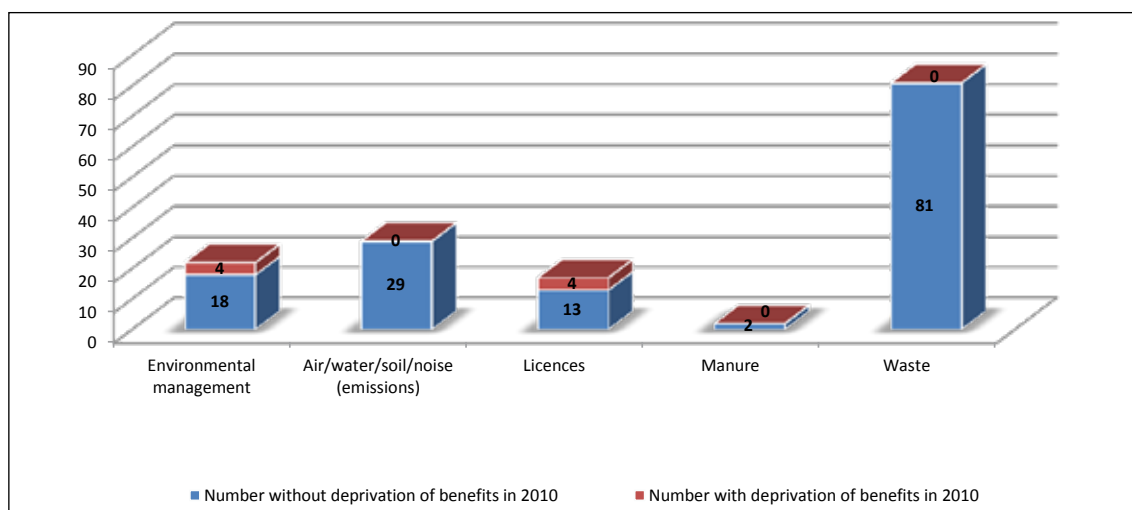
Of the 1,100 cases which the AMMC received from the public prosecutor's offices in 2010, a decision was reached in 219 cases. This means that only 20% of the total number of cases received by the AMMC in 2010 were processed. However, this can be put into perspective by mentioning the fact that the regional body has a period of 30 days to inform the suspected offender of its intention to impose an alternative administrative fine. Also, DABM provides for a period of 180 days (indicative period) for the regional body to take a decision in the case. As a result, the cases which the AMMC received in the second half of 2010 can still be processed in 2011.

Thanks to the establishment of the regional entity fewer environmental offences remained without sanctions in 2010 on a general level. This does not alter the fact that the number of processed cases is rather

low and that part of the tit-for-tat policy in the Environmental Enforcement Act is passed over. Since only 5 of the 304 cases were processed in 2009 and in 2010 a decision was reached in 1/5 of the cases, it could be stated that the outflow of cases with the AMMC has still increased by 18 percentage points. Again, this must be put into perspective, since in 2009 not one single fine was imposed in the 5 processed cases. In fact, these were offences that did not fall within the scope of the Environmental Enforcement Act. As a result, the procedure for the imposition of an administrative fine could not be started. Precisely because no fines were imposed in 2009, no comparison can be made with the number of processed cases in 2010.

When looking more specifically at the way in which the 219 cases were processed in 2010, it can be concluded that 151 alternative administrative fines were imposed for a total amount of 208,430.18 EUR, of which 165,738.68 EUR has already been collected. In addition, it was decided in 62 cases that the official report did not fall within the scope of Title XVI of DABM. 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. Finally, in 6 cases it was decided not to impose any alternative administrative fine, because there was insufficient evidence for the environmental offence or the offence was not considered serious enough.

The table and graph below present the framework within which an alternative administrative fine was imposed, whether or not accompanied by a deprivation of benefits.



**Graph 51** Framework within which an alternative administrative fine was imposed by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy, whether or not accompanied by a deprivation of benefits

Framework within which an alternative administrative fine was imposed	Number <i>without</i> deprivation of benefits in 2010	Number <i>with</i> deprivation of benefits in 2010
Nature Protection	18	4
Air/water/soil/noise (emissions)	29	0
Licences	13	4
Manure	2	0
Waste	81	0

**Table 62** Framework within which an alternative administrative fine was imposed by the

*Environmental Enforcement, Environmental Damage and Crisis Management Division  
of the Department of Environment, Nature and Energy, whether or not accompanied  
by a deprivation of benefits*

Of the 151 fines imposed by the AMMC in 2010, more than 53% pertained to waste, 19.21% to air/water/soil/noise, 14.57% to nature protection, 11.26% to licences and barely 1.32% to manure. The limited share of cases pertaining to manure may probably be explained by the fact that the Flemish Land Agency can impose administrative fines itself for certain breaches via the Manure Bank.

The fact that the cases regarding waste represent the largest share in the total number of imposed administrative fines is owing to the fact that 42.73% of the cases which the AMMC received from public prosecutor's offices in 2010 were related to waste.

Just over 5% of the imposed fines were combined with a deprivation of benefits. This involved 4 fines relating to licences and 4 fines regarding nature protection. Within the framework of violations against the Flemish Parliament Act on environmental licences it concerned on the one hand measurement obligations that were not carried out, the saved costs of which, in addition to the administrative fine, are pruned away, and on the other hand the interests on delayed investment costs. With regard to the fines relating to nature protection no further information was provided about the nature of the deprivation of benefits.

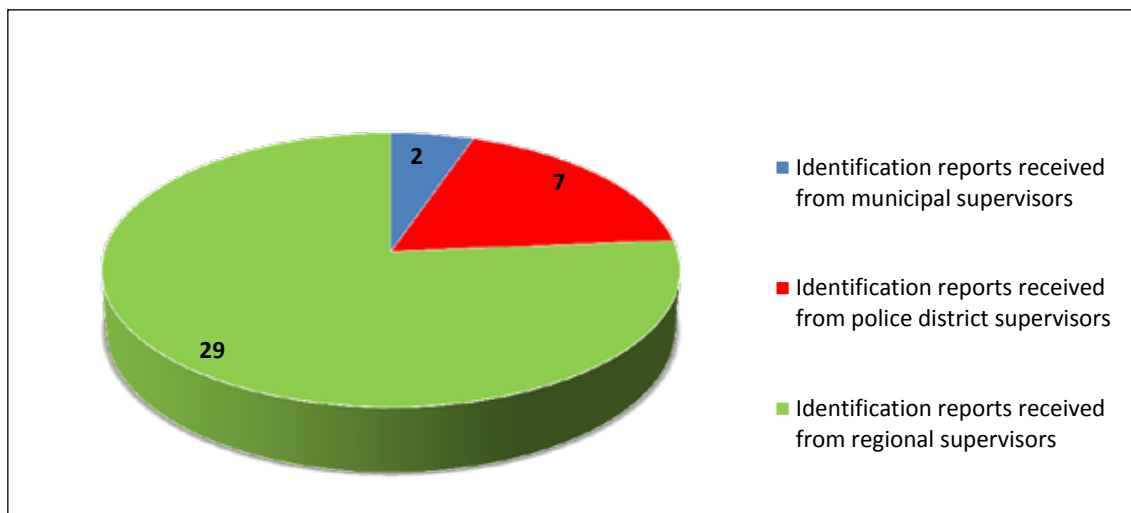
In addition, the AMMC awarded in 2010 the study 'Analyse en toepassing van het instrument voordeelontneming in het kader van de bestuurlijke milieuhandhaving' (Analysis and application of the instrument of deprivation of benefits within the framework of the administrative environmental enforcement). This study runs until September 2011 and is intended to (further) develop the framework within which the instrument 'deprivation of benefits' can be applied. This could possibly lead to a more frequent use of the instrument 'deprivation of benefits' by the AMMC.

#### 4.2.1.2 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. 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 (whether or not accompanied by a deprivation of benefits). Within a period of 90 days from the notification, the regional body decides on the imposition of an exclusive administrative fine, whether or not accompanied by a deprivation of benefits. Within ten days, the suspected offender must be informed of this decision.

The Environmental Enforcement, Environmental Damage and Crisis Management Division was therefore asked about the number of identification reports it received in 2010, 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 2010, subdivided by supervising actor.



*Graph 52 Identification reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy, per enforcement actor*

Identification reports	Number in 2010
Identification reports received by the AMMC in 2010	38
Identification reports received by municipal supervisors	2
Identification reports received by intermunicipal supervisors	0
Identification reports received by provincial supervisors	0
Identification reports received by police district supervisors	7
Identification reports received by regional supervisors	29

*Table 63 Identification reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy, per enforcement actor*

The AMMC received a total of 38 identification reports. More than 75% of these environmental infringements were identified by regional supervisors. In addition, 18.42% were identified by police district supervisors and 5.26% by municipal supervisors. Not one single intermunicipal supervisor identified an environmental infringement in 2010. As mentioned earlier, there were no provincial supervisors in 2010. The instrument was thus mainly used in 2010 by the regional supervisors.

Between 1 May 2009 and 31 December 2009 the AMMC received 18 identification reports. The majority were - contrary to 2010 - identified by local police supervisors. Despite a slight increase in the number of identification reports drawn up each year, it can again be concluded that the supervisors have not yet fully integrated this instrument into their activities. Another explanation could once again be that supervisors *may* draw up an identification report when they identify an environmental infringement, whereas they *are under the obligation* to draw up an official report when identifying an environmental offence. In other words, supervisors have discretionary power when it comes to environmental infringements, and can therefore judge themselves whether it is necessary or desirable to draw up an identification report. Another possible reason could be the nature of the breaches that are 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

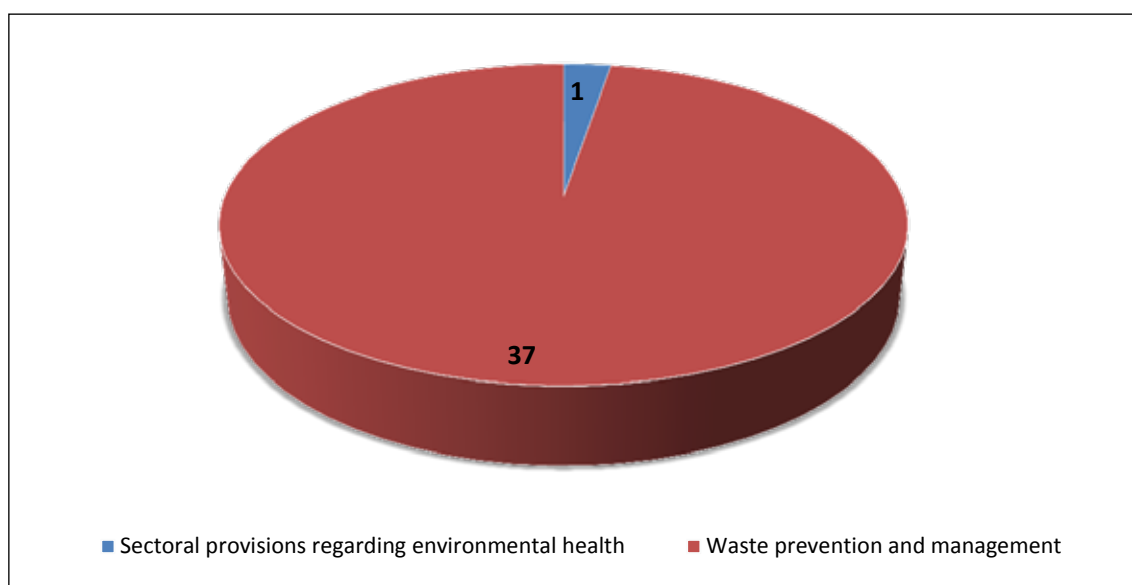
Environmental Enforcement Decree. In the context of its working group ‘Bestuurlijke en Strafrechtelijke Sanctienering’ (Administrative and Criminal Sanctions) the VHRM examines to what extent this list of environmental infringements may be complemented and the criteria be adjusted.

In Chapter 3 ‘Evaluation of the use of the individual environmental enforcement instruments and safety measures’, it was mentioned in the section ‘Evaluation of the instrument ‘identification report’’ that a total of 81 identification reports had been drawn up by supervisors in 2010. Police districts reported having drawn up only 4 identification reports during the study period, whereas the AMMC received 7 identification reports from local police supervisors. This can be explained by the fact that the VHRM did not obtain a response rate of 100% for the survey of the police district supervisors. On the other hand, it is remarkable that the AMMC indicated having received 29 identification reports from the regional supervisors, whereas these supervisors indicate having drawn up 56 reports in total in 2010. In addition, the AMMC received only 2 identification reports from municipal supervisors, while these supervisors indicate having drawn up 21 reports in 2010.

Once again, there is a discrepancy between the number of identification reports drawn up and the number of identification reports received by the AMMC.

Two possible explanations can be suggested here. Either a large number of identification reports failed to find their way to the Environmental Enforcement, Environmental Damage and Crisis Management Division, and the procedure to be followed needs to be communicated better, or – more plausibly – supervisors are clearly not familiar yet with the term ‘identification report’ as referred to in the Environmental Enforcement Act, resulting in ‘erroneous’ information being provided in the questionnaires. This matter clearly deserves further study within the VHRM, and both possible explanations require further attention.

The Environmental Enforcement, Environmental Damage and Crisis Management Division was asked to indicate the framework within which these 38 identification reports were drawn up. This is reflected in the graph and table below.



Graph 53 Identification reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy, per topic

Identification reports	Number in 2010
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	1
Waste prevention and management	37
Maintenance and inspection of burners	0
Certification of refrigeration companies	0
Fire protection systems	0
Soil remediation	0
Flemish Parliament Act on forests	0
Flemish Parliament Act on hunting	0
Ozone-depleting substances	0
Flemish Parliament Act on surface minerals	0
Fluorinated greenhouse gases	0
REACH	0

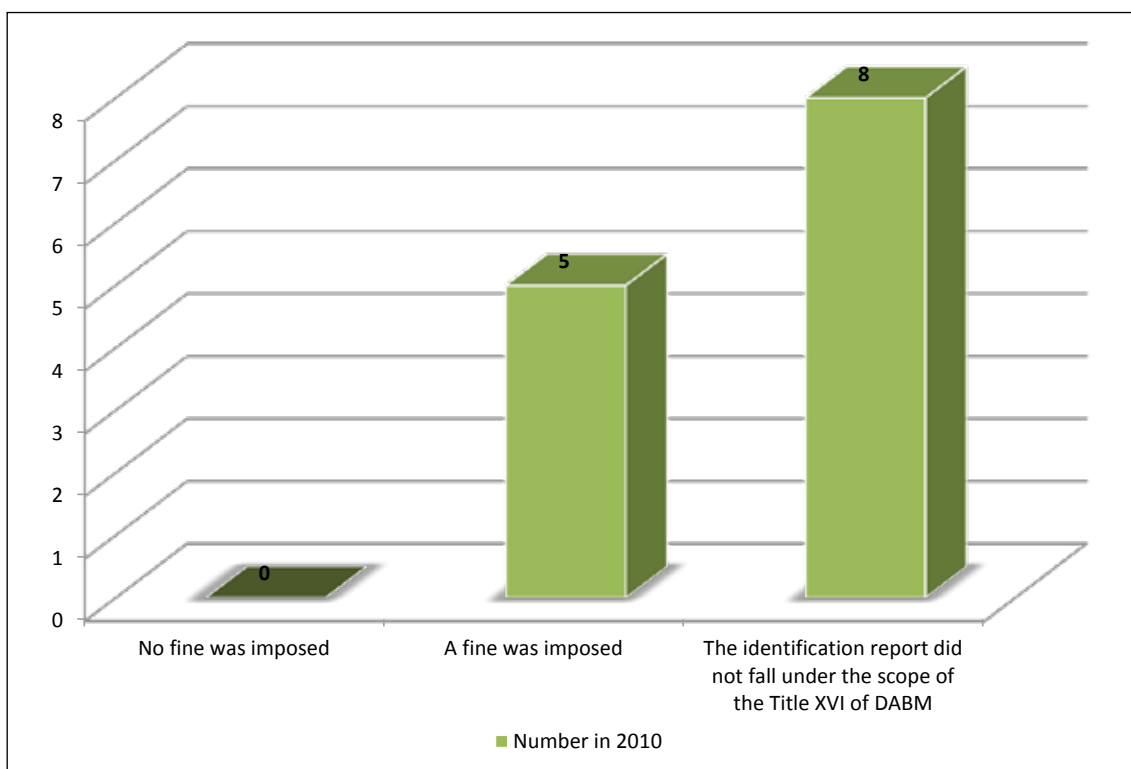
*Table 64 Identification reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy, per topic*

Despite the fact that an identification report can be drawn up for a wide range of infringements, the framework is limited to infringements relating to waste prevention and management and infringements regarding sectoral provisions on environmental health, with a clear predominance of the infringements relating to waste prevention and management. In fact, 97.37% of the total number of identification reports that were received by the AMMC were drawn up following environmental infringements relating to waste prevention and management. The AMMC received only one identification report that was drawn up following an infringement of the sectoral provisions on environmental health.

In 2009 as well the identification reports - 88.89% of the identification reports received by the AMMC - mainly referred to waste prevention and management. Apart from that, only one case in 2009 pertained to soil protection and remediation and one case to the maintenance and inspection of burners.

This means that both in 2009 and 2010 the identification reports were mainly drawn up on the topic of waste prevention and management, and that other environmental infringements were hardly identified or even not at all. Therefore, further research needs to be done into the relevance of the provisions included as environmental infringements in the annexes to the Environmental Enforcement Decree. Another possible explanation for the fact that only a specific type of environmental infringement is identified is that supervisors must become more familiar with the instrument 'identification report' and with the environmental breaches that have been qualified as environmental infringements.

The Environmental Enforcement, Environmental Damage and Crisis Management Division was asked to indicate which actions were taken in 2010 with respect to the received identification reports. This is reflected in the graph and table below.



*Graph 54 Decisions reached within the framework of exclusive administrative fines by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in 2010*

Exclusive administrative fine	Number in 2010
Identification reports received by the AMMC in 2010	38
Decisions reached within the framework of the exclusive administrative fine	13
No fine was imposed.	0
A fine was imposed.	5
The identification report did not fall under the scope of Title XVI of DABM	8

*Table 65 Decisions reached within the framework of exclusive administrative fines by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in 2010*

In 2010, the Environmental Enforcement, Environmental Damage and Crisis Management Division received 38 identification reports. With respect to these 38 identification reports, 13 decisions were reached. 34.21% of the identification reports referred to the AMMC in 2010 were thus processed in 2010. In 2009, 22.22% - or 4 out of 18 received identification reports - were processed. This is a slight increase in the percentage share of decisions taken in 2010. Still, the number of processed cases continues to be relatively low. The limited number of decisions can, once again, be explained by the periods defined by the Environmental Enforcement Act. After receiving an identification report, the regional body can, within a period of 60 days, inform the suspected offender of its intention to impose an exclusive administrative fine. Within a period of 90 days from this notification, the AMMC has to decide on the imposition of an exclusive administrative fine, whether or not accompanied by a deprivation of benefits. As a result, the cases that were received by the AMMC during the last five months of 2010 can still be processed in 2011. In

concrete terms, it concerned 9 cases, the end date of which did not expire until 2011. Of the 13 decisions, 5 decisions were taken to impose an exclusive administrative fine for a total amount of 6,670.4 EUR, of which 2,797.8 EUR was already collected (for the benefit of the Mina Fund<sup>99</sup>). In 8 cases, or 61.54% of the decisions taken by the AMMC in 2010, the identification report did not fall within the scope of Title XVI of DABM, in most cases because the person who drew up the report had not been appointed as a supervisor.

However, the Environmental Enforcement, Environmental Damage and Crisis Management Division is not obliged to impose an exclusive administrative fine. No use was made of this possibility in 2010. The decisions always implied the imposition of an administrative fine or the conclusion that the identification report did not fall within the scope of Title XVI of DABM. In 2009, it was decided in the context of one case not to impose any fines. In 3 out of the 18 identification reports drawn up in 2009 it was decided to impose an exclusive administrative fine. This means that in 2009 a total of 4 out of 18 received cases were processed.

The five fines that were imposed in 2010 by the Environmental Enforcement, Environmental Damage and Crisis Management Division all referred to waste prevention and management. In 40% of the cases the fine was combined with a deprivation of benefits.

#### 4.2.2 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 based on Article 16.4.19 of DABM. It passes judgement in the appeals against the decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division referring to the imposition of alternative or exclusive administrative fines.

The Environmental Enforcement Court was also questioned by the VHRM about its activities in 2010. It was asked about the number of received appeals against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division in the framework of both environmental offences and environmental infringements in 2010. It was also asked how these appeals were processed.

The table below shows the activities of the Environmental Enforcement Court in 2010 with regard to the appeals lodged against decisions of the AMMC in the context of an environmental offence.

Environmental offences	Number in 2010
Appeals against decisions of the AMMC in the context of an environmental offence	11
Rejections, stating reasons, on the grounds that the appeal is inadmissible or unfounded, resulting in the confirmation of the imposed alternative administrative fine	2
Declarations, stating reasons, that the appeal is well-founded, resulting in a reduction of the imposed alternative administrative fine	1
Declarations, stating reasons, that the appeal is well-founded, resulting in a remission of the imposed alternative administrative fine	1
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
No judgement pronounced yet in 2010	7

*Table 66 Appeals received against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in the context of an environmental offence by the Environmental*

<sup>99</sup> Environment and Nature Fund.



*Enforcement Court in 2010 and the results of the processing thereof*

As indicated earlier, the Environmental Enforcement, Environmental Damage and Crisis Management Division imposed 151 alternative administrative fines in 2010. In 2010, the Environmental Enforcement Court received 11 appeals against decisions of the AMMC in the context of imposed *alternative* administrative fines. This means that an appeal was lodged against at least 7.28% of the decisions of the AMMC. This percentage may be 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 2010.

In 2010, the Environmental Enforcement Court took a decision in four out of the eleven lodged appeals. Twice 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. One time 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 one time 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 11 appeals lodged in 2010 no judgement had been pronounced yet in 7 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 for the appeals that were lodged in the last 270 days of 2010 no decision had to be taken yet by the Environmental Enforcement Court.

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.

Environmental infringements	Number in 2010
Appeals against decisions of the AMMC in the context of an environmental infringement	1
Rejections, stating reasons, on the grounds that the appeal is inadmissible or unfounded, resulting in the confirmation of the imposed exclusive administrative fine	0
Declarations, stating reasons, that the appeal is well-founded, resulting in a reduction of the imposed exclusive administrative fine	0
Declarations, stating reasons, that the appeal is well-founded, resulting in a remission of the imposed exclusive administrative fine	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
No judgement pronounced yet in 2010	1

*Table 67 Appeals received against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature*

*and Energy in the context of an environmental infringement by the Environmental Enforcement Court in 2010 and the results of the processing thereof*

In 2010, the Environmental Enforcement Court received only one appeal against an exclusive administrative fine imposed by the AMMC. Since the AMMC imposed 5 exclusive administrative fines in 2010, this means that in 20% of the cases an appeal was lodged against the decision of the regional body in 2010. This percentage may be 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 2010.

No judgement had been pronounced yet in 2010 with respect to the lodged appeal. The Environmental Enforcement Court communicated that the appeal concerned has resulted in an intermediate decision, with a reopening of the debates. Within the framework of the appeals against the exclusive administrative fines imposed by the AMMC as well the Environmental Enforcement Court is bound by the procedures and terms laid down in the Environmental Enforcement Act.

#### **4.2.3 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 Vlaamse Landmaatschappij or VLM (Flemish Land Agency) was given competence to impose administrative fines 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 2010 and the actions 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.

The graph below shows the number of field identifications and the number of administrative fines imposed by the VLM in 2010.

Administrative measures imposed by the VLM	Number of field identifications in 2010	Number of fines in 2010
Administrative fines imposed by the VLM in 2010 in keeping with the provisions included in the Flemish Parliament Act on manure	278	5,436
an administrative fine regarding nitrogen and phosphate balance	8	738
an administrative fine for overfertilisation of a plot	55	19
an administrative fine for keeping more animals than nutrient emission rights (NER-D)	0	2,138
an administrative fine for unproven manure sales	2	3
an administrative fine for notification and cancellation of shipments	0	73
an administrative fine for late notification of shipments	0	546
an administrative fine for shipments without proof of dispatch or presentation of an agreement with the neighbours	5	3
In how many cases was an administrative fine imposed for failure to establish or notify an agreement with the neighbours?	6	7
an administrative fine for shipments without a correct and complete manure sales document	103	109
an administrative fine for failure to comply with the notification obligation	4	1,280
an administrative fine for erroneous notification	4	4
an administrative fine for failure to keep a register	2	5
an administrative fine for not keeping nutrient balances available for inspection	0	415
an administrative fine for shipment without mandatory documents	29	30
an administrative fine for refusal to use Sanitel	0	0
an administrative fine for failure to use or incorrect use of AGR-GPS	60	64
an administrative fine regarding manure processing obligation and processing of 25% NER	0	0
an administrative fine regarding manure excretion balances	0	0
an administrative fine for shipment by recognised shippers (notification or cancellation)	0	1
an administrative fine for shipment by recognised shippers (no shipping document)	0	1
an administrative fine for exceedance of nitrate residue in high-risk area	0	0
an administrative fine for refusal of sampling of nitrate residue in high-risk area	0	0
an administrative fine regarding cultivation plan and fertilisation plan/register for nitrate residue (both in and outside high-risk area)	0	0

**Table 68** *Number and nature of the administrative fines imposed by the Flemish Land Agency*

The table above shows that in 2010 the VLM imposed 5,436 fines following 278 field identifications. The difference between the number of infringements identified in the field and the number of imposed fines

originates from the term for the imposition of the fines. A fine was not always imposed in 2010 for the identifications made in 2010. The fines imposed in 2010 may still be related to identifications of the previous years. Moreover, the fines imposed in 2010 originate from infringements identified in the field as well as from administrative inspections. In 2010, for instance, 4,379 fines were administratively imposed following the inspection of the database. This means that these are not reflected in the number of field identifications made in 2010. The fines included 2,138 administrative fines for having more animals than nutrient emission rights (NER-D), 546 administrative fines for the late notification of shipments, 1,280 administrative fines for failure to comply with the notification obligation and 415 administrative fines for not keeping nutrient balances available for inspection.

With regard to the administrative fines imposed for failure to use or incorrect use of AGR-GPS it must be communicated that 5 of these fines were imposed following the inspection of the database, whereas the other 59 fines were imposed following a field identification.

As for the administrative fines for breaches regarding the nitrogen and phosphate balance 5 fines were imposed in 2010 following a field inspection, whereas the other 733 fines were imposed on the basis of annual calculations of the data in the database.

This means that in 2010 319 administrative fines were imposed following a field identification and 5,117 administrative fines were imposed following the inspection of the data in the database.

### **4.3 Conclusion**

In the Environmental Enforcement Report 2009 it could be established that the public prosecutor's offices already made use of the possibility to refer cases to the Environmental Enforcement, Environmental Damage and Crisis Management Division in the period between 1 May 2009 (coming into force of the Environmental Enforcement Act) and 31 December 2009. In total, nearly 10% of all the environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region after 1 May 2009 were dismissed as at 10 January 2010 in view of the imposition of an administrative fine. In order to have the Environmental Enforcement Act produce the desired effect, however, the idea was to reach a decision on whether or not to impose an alternative administrative fine as soon as possible (the so-called tit-for-tat police) for each case that was referred by the public prosecutor's offices to the Environmental Enforcement, Environmental Damage and Crisis Management Division. However, it showed from the Environmental Enforcement Report 2009 that the number of cases referred was rather limited with this division. This can be explained by the terms of processing of the Environmental Enforcement Act and the fact that this division was completely new and still needed to get organised. One of the goals of the present Environmental Enforcement Report 2010 is to evaluate the Flemish environmental sanctions policy in 2010. This means, among other things, that the decisions of the public prosecutor's offices whether or not to impose criminal sanctions for an identified environmental offence, the decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division within the framework of the alternative and administrative fines and the decisions of the Environmental Enforcement Court with regard to appeals against imposed administrative fines were discussed in this chapter.

Based on the figures above it is possible to draw the following conclusions or confirm the following trends.

With respect to the enforcement policy of the public prosecutor's offices in the Flemish Region it was found that in 2010 the public prosecutor's offices received 6,367 cases relating to the environment, 65.46% of which came from the general police (local and federal police), and 29.17% from the inspection services (supervisors). 1.02% were complaints and civil proceedings and 4.56% other submissions.

Based on the specific codes used by regional supervisors it was possible to draw a picture of cases submitted by these Flemish environment services. In 2010 it concerned 1,438 cases, 39.78% of which came from ANB, 35.05% from AMI, 18.29% from VLM, 3.69% from OVAM and 3.20% from other environment services.<sup>100</sup> These figures are probably an underestimation, as not all Flemish environment administrations use the specific codes within the reference numbers. Therefore, a recommendation for the different environment administrations could still be to make consistent use of these codes.

It was also possible to report per topic (waste, manure, licences, air/water/soil/noise (emissions), nature protection) based on the charge codes for 2010. In total, 6,367 cases were recorded by the public prosecutor's offices in the Flemish Region in the study period with these charge codes. 42.12% referred to waste, 5.10% to manure, 13.63% to licences, 24.08% to emissions and 15.06% to nature protection. More specifically, 26.87% referred to illegal dumping, which means that nearly 1 in 4 breaches for which an official report was drawn up in 2010 related to illegal dumping.

On 10 January 2011, nearly 1/4 of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were still<sup>101</sup> in the preliminary investigation stage, while 6.52% were in the state of progress 'amicable settlement'. 4.27% were in the 'writ of summons' stage on 10 January 2011.

However, the fact that no less than 55.05% of all environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region, during the study period and as at 10 January 2011, were dismissed, needs to be placed in context. In fact, many of the recorded cases cannot be prosecuted. This is because they also include 'referred cases' and 'technical dismissals'. Moreover, 'other dismissals' (administrative fine, Praetorian probation, signalling of the offender) and 'dismissals based on the principle of opportunity where it could be demonstrated that the situation had been regularised' were also included in the state of progress 'without further action'.

In the context of the state of progress of environmental enforcement cases certain trends can be described – with due caution. These trends build on the trends already observed in the Environmental Enforcement Report 2009. For the largest share of these cases – concretely 55.05% – it was decided that no further action would be taken in 2010. Almost half of these cases referred to waste. The trend following from this is that the category for which the largest number of cases was received, namely that with the charge code 'waste', was also the one with the highest dismissals ratio. On the basis of the same conclusions in the Environmental Enforcement Report 2009 the question was raised as to whether further study may be required into possible alternative ways of processing these cases, such as the imposition of an administrative fine. Since the Environmental Enforcement, Environmental Damage and Crisis Management Division provided more detailed information for the present environmental enforcement report, it could be concluded that 42.73% of the 1,100 cases which the AMMC received in 2010 referred to waste. On the basis of the data from the public prosecutor's offices it could also be concluded that 25.79% of all the dismissed cases that referred to waste were dismissed in view of the imposition of an administrative fine.

The total number of dismissals in the framework of 'other reasons - administrative fine' is especially interesting in the context of this environmental enforcement report. Obviously, it is important in the framework of the new Environmental Enforcement Act to study 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 indicate that the upward trend which was already visible in the Environmental Enforcement

100 Some of the cases relating to nature protection law mainly fall under the competence of the police prosecutors and the police courts. Therefore, these environmental cases were not included in the figures.

101 Given that the reference date for these data of the public prosecutor's offices is 10 January 2011, it is important to interpret the data on the state of progress in their right context. The data and percentages offered in this context only refer to the situation on 10 January 2011, and are not the definitive status of a case.

Report 2009 is continued. In total, nearly 10% of all environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region after 1 May 2009 were dismissed as at 10 January 2010 in order to impose an administrative fine. In 2010 this increased to 15.31%. Despite the fact that the Flemish Parliament Act was only in force for six months, this increase can already be considered remarkable.

It could also be concluded that the percentage share of cases in which no further action was taken for reasons related to opportunity continued to drop in 2010, in favour of dismissals in view of the imposition of an administrative fine. This reinforces the idea as formulated in the Environmental Enforcement Report 2009 that this shift could indicate that public prosecutor's offices choose to dismiss cases in view of the imposition of an administrative fine rather than opt for a dismissal based on the principle of opportunity (or a technical dismissal). This shows that the Environmental Enforcement Act continued to have a positive impact in 2010.

However, it must be pointed out that it is still too early to draw final conclusions based on the data extracted on 10 January 2011. We can only try to describe some trends, since it is possible that even more cases are referred to the AMMC for the imposition of an administrative fine, given the fact that a lot of cases had not yet reached their final state of progress on 10 January 2011.

In order to maximise the impact of the Environmental Enforcement Act – and administrative sanctions in particular – it is important to further study how as many dismissed cases as possible can be referred to the AMMC by public prosecutors. Despite the fact that the number of cases that were dismissed for opportunity-related reasons decreased, a further referral to the AMMC continues to be possible. Optimal harmonisation between public prosecutor's offices and the AMMC can further strengthen environmental enforcement. Therefore, it is advised to make further agreements about this matter.

It also shows from the figures supplied that there are still regional differences between the different public prosecutor's offices when it comes to the way in which environmental offences are processed, and the way in which they are submitted to the AMMC. This point deserves further study with a view to more uniform sanctions for environmental offences in the Flemish Region, where this is possible and desirable.

The figures of the public prosecutor's offices show that over 15% of all environmental enforcement cases recorded by the public prosecutor's offices in the Flemish Region in 2010 were dismissed in view of the imposition of an administrative fine. In 2009 (just after the Environmental Enforcement Act had come into force) this amounted to 10%. Many of these cases were referred to the AMMC; the remaining cases were submitted to other administrations, such as the VLM. In total, the AMMC received 1,100 official reports in view of the imposition of an alternative administrative fine in 2010. From the figures on the submitted cases per public prosecutor's office, the regional differences that could also be observed from the figures of the public prosecutor's offices became clear as well. Nevertheless, it can be said that all public prosecutor's offices in the Flemish Region have already made further and more frequent use<sup>102</sup> of the possibilities offered by the Environmental Enforcement Act (to refer cases to the AMMC in view of the imposition of an administrative fine) in 2010.

In the Environmental Enforcement Report 2009 it could be concluded with regard to environmental offences that in total the AMMC had received 304 cases and that in 5 cases it was found that the official reports did not fall under the scope of Title XVI of DABM (breaches dating from before 1 May 2009). Therefore, the procedure for imposing an administrative fine could not be initiated. With regard to the other 229 cases, no decision had been taken yet in 2009. The decisions regarding the cases which the AMMC received in 2009 are therefore also part of the 219 decisions of 2010, since the terms only expired in 2010. Of these

<sup>102</sup> In 2010, each public prosecutor's office showed an increase in the percentage share of cases received by the public prosecutor's offices in the Flemish Region, delivered to the Environmental Enforcement, Environmental Damage and Crisis Management Division compared to 2009 (following the entry into force of the Environmental Enforcement Act), except the public prosecutor's office of Oudenaarde.

219 decisions taken by the AMMC in 2010 within the framework of environmental offences, 175 decisions referred to cases which were received in 2009 and for which the decision deadline expired in 2010. The figures above indicate that the AMMC received 1,100 cases from the public prosecutor's offices in 2010. Almost half of these official reports were drawn up by the local police and nearly half of them referred to waste. It could be observed, however, despite the increase in the number of cases referred by the public prosecutor's to the AMMC for the imposition of an administrative fine, that barely 19.90% of these 1,100 cases were actually processed in 2010. In 62 cases it was established that the official report did not fall within the scope of Title XVI of DABM and it was decided not to impose any fines in 6 cases. In 151 of the 1,100 cases a fine was actually imposed. This finding raises the question as to whether further examination is required of an alternative method of processing in order to create a real tit-for-tat policy. In this context the addition of the instrument 'administrative transaction' could be considered.

The AMMC is not only competent to impose alternative administrative fines, but also to impose exclusive administrative fines in relation to 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. During the study period the AMMC received 38 identification reports, 37 of which referred to waste prevention and management, and 1 to sectoral provisions on environmental health. More than 3/4 were drawn up by regional supervisors.

The identification report is an enforcement instrument that was introduced by the Environmental Enforcement Act. In the Environmental Enforcement Report 2009 it was concluded that the new instrument had not yet been completely integrated into the activities of the supervisory bodies. On the basis of the figures above the question can also be raised as to what extent the supervisors are entirely familiar with the new instrument and related procedures. In Chapter 3 it was indicated that the supervisors themselves communicated having drawn up 81 identification reports in 2010, whereas the AMMC received only 38. One explanation could be that supervisors did actually draw up identification reports, but that these were not submitted to the AMMC. Another explanation may be that the procedures of the Environmental Enforcement Act may still not be completely known yet by all the supervisors, or maybe the questioned supervisors are still insufficiently familiar with the term 'identification report' as specified in the Environmental Enforcement Act. An important reason for the limited number of identification reports drawn up by some supervisors is the fact that in some environmental legislation (such as the nature protection legislation) hardly any breaches are entered as environmental infringements. The fact that supervisors draw up only a limited number of identification reports can also be explained by the fact that they have discretionary power in this respect. When identifying an environmental infringement supervisors are not obliged to draw up an identification report. This clearly also deserves further study.

In 2010 the AMMC took a decision in 13 of these 38 cases. In five cases an exclusive administrative fine was imposed, and in eight cases it was established that the identification report did not fall within the scope of Title XVI of DABM. 34.21% of the identification reports submitted to the AMMC in 2010 were thus processed in 2010.

Appeals may be lodged with the Environmental Enforcement Court against AMMC decisions to impose fines. During the study period this Environmental Enforcement Court received 11 appeals against AMMC decisions in the context of an environmental offence and 1 appeal against an AMMC decision in the context of an environmental infringement. The low number of appeals lodged with the Environmental Enforcement Court can be explained by the fact that the inflow with the Environmental Enforcement Court naturally depends on the outflow from the Environmental Enforcement, Environmental Damage and Crisis Management Division. In 2010, the Environmental Enforcement Court took a decision in four out of the twelve lodged appeals. No judgement was pronounced yet for the other 8 appeals in 2010. This is owing to 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.

Since the coming into force of the Flemish Parliament Act on manure, the VLM has competence to impose administrative fines for certain breaches of the Flemish Parliament Act on manure. The VLM was therefore not only asked about the number of environmental enforcement inspections carried out in 2010 and the actions taken following these inspections, 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. In the study period the VLM imposed 5,436 administrative fines following 278 field identifications. The difference between the number of infringements identified in the field and the number of imposed fines originates from the term for the imposition of the fines. A fine was not always imposed in 2010 for the identifications made in 2010. The fines imposed in 2010 may still be related to identifications of the previous years. Moreover, the fines imposed in 2010 originate from infringements identified in the field as well as from administrative inspections. In 2010, for instance, 4,379 fines were administratively imposed following the inspection of the database. This means that these are not reflected in the number of field identifications made in 2010.

Besides the Environmental Enforcement Act there are other instruments that contribute to environmental enforcement. These include, for instance, sanctions that involve a deprivation of rights, such as the suspension or withdrawal of authorisations (environmental licences, recognitions,...). Another example is the municipal administrative sanction, as defined in Art. 119bis of the New Municipal Act, which is quite an important instrument for imposing sanctions in the framework of local environmental enforcement and, in particular, the combating of small-scale public nuisance. When drawing up this Environmental Enforcement Report 2010, however, it was again decided to report only on the activities of the public prosecutor's offices, the AMMC, the Environmental Enforcement Court and the VLM.



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## 5 Conclusion

### 5.1 Summary conclusions

Just like the Environmental Enforcement Report 2009 this enforcement report for 2010 will in the first instance give an overview of the main conclusions. At the end of the various sections a number of tentative conclusions have already been drawn, which can be largely summarised here. Whereas in the Environmental Enforcement Report 2009 important restrictions still applied (because this reporting only covered the period from 1 May 2009 to 31 December 2009) this Environmental Enforcement Report for 2010 could provide a greater insight. Another advantage is that a comparison can now be made between both years, as a result of which it can be examined whether certain trends that could be observed in 2009 were only occasional or whether they actually continued. Nevertheless, some of the warnings that were made with regard to the methodology used in the Environmental Enforcement Report 2009 still apply. Although this report has provided us with a large number of figures again, it does, for instance, not provide any insight into the effectiveness of enforcement activities, the burden of enforcement on the inspected bodies, the benefits for the environment, or the effectiveness of the current instruments and the participation of third parties in environmental enforcement. An effectiveness analysis could imply that a causal relationship is also examined between the instruments used and an improvement of environmental quality. However, this is impossible with the resources which the VHRM has at its disposal. Not only are the data which the VHRM has at its disposal limited, the response from the actors involved in enforcement was not always complete either. On the other hand, the response was always reflected and it was also indicated to what extent this could be considered representative. Despite these limitations, a relatively clear picture can now be obtained of the enforcement activities of the different enforcement actors in the Flemish Region for the second year in a row.

The main conclusions/findings can be summarised as follows:

#### \* Evaluation of the supervision carried out

A first conclusion follows from a comparison of the number of actors involved in enforcement (according to the Environmental Enforcement Act), the competences assigned to them and the actual efforts made in the area of environmental enforcement. In Chapter 2 of this report it was found that in some cases the proportion between the number of appointed supervisors, the time dedicated by them, their supervisory duties and the number of environmental enforcement inspections carried out calls for further study. There especially seems to be a large difference between the actors in terms of the extent to which the appointed supervisors could actually carry out enforcement duties. This can be partially explained by the fact that some enforcement actors have been assigned a large number of competences. In these cases these supervisors are engaged practically full-time in supervisory duties. Other actors had to monitor compliance with only a limited number of laws or acts. Therefore, enforcement is rather an additional task for the supervisors who have been appointed in this context.

Compared to 2009, the number of employable FTEs that was dedicated to environmental enforcement duties either remained the same or increased with most regional enforcement actors in 2010.

The average number of environmental enforcement inspections carried out per supervisor and the average number of inspections per FTE decreased slightly in 2010 compared to 2009. However, this is only a small decrease and cannot be regarded as significant. Therefore the VHRM does not consider this to be a point of concern.

Compared to 2009, more police districts had one or several supervisors at their disposal in 2010. However, the average amount of time each local police supervisor could dedicate to supervisory duties decreased slightly.

In 2010, a total of 3,741 environmental enforcement inspections were carried out by the (in total 123) local police supervisors, which represents an average of 30.41 environmental enforcement inspections per local police supervisor. 94% of these enforcement inspections took place reactively following complaints and reports. This is quite a rise compared to 2009 when on average only 11.51 inspections were carried out per local police supervisor. However, important differences can be observed between the different categories of police districts, which are probably due to differences in expertise.

Third parties seem to make relatively little use of the possibility to submit a petition to the provincial governor (and mayor) to impose administrative measures. In 2010, only 4 such petitions were filed to the provincial governors and only one administrative measure was imposed. The mayors reveal a different picture: they received 61 requests and 56 petitions for imposing administrative measures and actually imposed 128 measures in 2010.

Although this is possible under the Environmental Enforcement Act, supervisors were still not appointed by the Provincial Executives of the five provinces in 2010.

The Environmental Enforcement Report 2009 devoted ample attention to the (mainly new) enforcement activities of the local supervisors. A remarkable finding in this was that 68% of the responding municipalities indicated not having any insight into the number of unlicensed plants on their territory. This number decreased to 7.5% in 2010, which can clearly be seen as a positive evolution. This figure is somewhat astonishing and therefore requires further examination.

Of the 185 (on a total of 308) Flemish municipalities, 170 indicated having appointed a supervisor. In total, 269 supervisors were appointed within these 185 municipalities. Only 8.10 % of the responding municipalities indicated not having appointed a supervisor yet. On average they dedicated 0.24 FTEs to enforcement duties. However, within certain small municipalities only between 0.00 and 0.10 FTEs are dedicated to enforcement, which seems to be a problem.

#### \* Evaluation of the separate environmental enforcement instruments and safety measures

An evaluation of the different enforcement instruments shows that in 2010 as well most instruments made available by the Environmental Enforcement Act are used frequently by the different supervisors.

What is remarkable is the fact that in general no breach could be identified in almost 70% of the inspections. This could mean that the environmental regulations in the Flemish Region are generally complied with to a high extent. However, in this context there are striking differences between the enforcement actors that require further study.

In 2009, it was concluded that supervisors were still not very familiar with the identification report and hardly applied this instrument. In 2010, this share has somewhat increased. Still, the number of identification reports is still only a small share of the number of inspections (only 81 reports on a total of 10,424 inspections during which a breach was identified). Just like in 2009 there is a discrepancy between the number of identification reports that is said to have been drawn up in 2010 (21) by the municipal super-

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visors and the number of reports that is said to have been received by the AMMC (2). This could either (still) mean that identification reports were not always systematically forwarded to the AMMC or that some municipalities (wrongfully) also record internal reports as identification reports under the Environmental Enforcement Act.

The official report is still one of the most frequently used enforcement instruments, mainly by the local police. However, compared to 2009, the number of official reports seems to have decreased, which cannot really be explained.

Although in 2010 more administrative measures were imposed than in 2009, the number of administrative measures on the total of performed inspections during which a breach was identified is still very low: 6.30%.

#### \* Evaluation of the sanctions policy

The data from both the public prosecutor's offices and the AMMC show that, in 2010 as well, several public prosecutor's offices have found their way to administrative processing (via alternative administrative fines) as provided for in the Environmental Enforcement Act. In 2009, the number of official reports which the public prosecutor's offices referred to the AMMC was on average 10%. In 2010, this increased to 17%. This is a substantial increase and it indicates that certain cases which were probably dismissed by public prosecutor's offices in the past are now referred to the AMMC in view of the imposition of an administrative fine. This means that one of the objectives of the Environmental Enforcement Act has been realised. Even so, there is no doubt still room for improvement here as well. Since the total number of official reports referred to the AMMC by public prosecutor's offices amounted to 17%, this means that there are presumably still a lot of environmental offences for which no further action is taken by the public prosecutor's offices or which are dismissed for reasons of opportunity, whereas they would still be eligible for an administrative fine.

There continue to be large differences between the public prosecutor's offices in terms of the number of cases which the AMMC received in 2010. The number of referred official reports in Dendermonde, for instance, amounted to over 34%, whereas for Hasselt this was not even 3% and for Oudenaarde less than 4%. Hence, there continues to be room for improvement when it comes to the harmonisation between the different public prosecutor's offices.

As new regional body the AMMC strongly invested in the development of a framework (processes, methodology) for qualitative, coherent and uniform administrative sanctions in 2010. During this period the AMMC received no less than 1,100 official reports on environmental offences from the public prosecutor's offices. Half of these official reports were drawn up by the local police. Nearly half of the official reports referred to waste. The other half were up to a quarter related to environmental health violations and the other quarter to nature protection law violations. The procedure for the imposition of an administrative fine was initiated for these 1,100 cases. Some 200 cases regarding fines were completely processed in 2010 and 151 fines were actually imposed. The other cases will be further processed in 2011.

In 2010, the Environmental Enforcement Court (competent for the processing of appeals against AMMC decisions to impose a fine) received 11 appeals in the context of an environmental offence and one appeal against a decision in the context of an environmental infringement. In 2010, the Court took a decision in 4 of the 12 lodged appeals. In the other 8 appeals no judgement was reached yet, which is due to the terms and procedures laid down by the Environmental Enforcement Act.

## 5.2 Recommendations

Based on the above conclusions and the data presented in this Environmental Enforcement Report several recommendations can be formulated, with respect to both the data collection and the effectiveness of environmental enforcement. These include on the one hand recommendations addressed to the Government of Flanders (5.2.1) and on the other hand issues which the VHRM itself wants to devote further attention to (5.2.1). These were partially issues that already drew attention in the Environmental Enforcement Report 2009, which means of course that the VHRM will continue to focus on them.

### 5.2.1 Recommendations for the Government of Flanders

In accordance with Article 16.2.5 of the Environmental Enforcement Act the VHRM formulates recommendations in this Environmental Enforcement Report for the further development of the environmental enforcement policy. This is also one of the duties assigned to it, namely to propose key elements and priorities for the policy aimed at environmental law enforcement. It can be reported that some of the recommendations which the VHRM is planning to formulate on the basis of this report, are currently already the subject of legislative action by the legislator. In some cases the improvement of environmental enforcement is indeed so acute, that even before the publication of the Environmental Enforcement Report contacts are taking place between the VHRM and the competent Minister, during which the VHRM can point out a number of problems that require legislative action.

An important point of concern, especially in times of financial crisis, is that the VHRM has observed that many enforcement actors are strongly confronted with the effects of a shortage of human and financial resources and that in the long run this may naturally be to the detriment of the enforcement quality. The VHRM itself has personally experienced this problem: due to a shortage of staff this Environmental Enforcement Report 2010 can only be published in 2012. The VHRM recommends the Government of Flanders, on the one hand, to continue to reserve funds, if possible within the financial framework, in order to guarantee minimum enforcement of the environmental legislation; on the other hand the supervisors are recommended to make even better use of the scarce resources, whenever possible, for instance through targeted enforcement actions.<sup>103</sup> Furthermore, the following recommendations can be formulated:

As already reported in the Environmental Enforcement Report 2009 it seems advisable, especially for smaller municipalities, to make more frequent use of the possibility of appointing supervisors via inter-municipal associations. The Government of Flanders could promote the joining of these intermunicipal associations by smaller municipalities in view of support in terms of enforcement.

Within the VHRM a study contract is being performed on the role of local (and in particular municipal) supervisors in environmental enforcement. The results are expected to be delivered in May 2012. The VHRM recommends not to take any final steps with regard to the (financing of) environmental enforcement by local supervisors, until the results of this study are known,<sup>104</sup> but to take account of the results of the study that was contracted out by the VHRM in any future decision-making.

It seems to be advisable (just like in 2009) to again recommend supervisors in general, and municipal supervisors in particular, to give priority to the monitoring of the compliance with the licence/reporting obligation of the plants and activities present on their territory. Although the total estimated number of unlicensed plants (on the basis of a response from 185 municipalities) decreased from 4,056 in 2009 to 2,223 in 2010, this issue requires further enforcement action, possibly through a more intensive monitoring of these unlicensed nuisance-causing plants. It also seems important to focus attention on the

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<sup>103</sup> This is precisely why the VHRM organised a study day on targeted enforcement on 8 April 2011.

<sup>104</sup> See also in this context the discussion about the White Paper on the Internal Reform of the Federated State of Flanders, Government of Flanders, April 2011.

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question whether the real situation 'on the shop floor' corresponds to that described in the available licence/report.

Moreover, it seems recommendable to encourage municipal supervisors to not only formally appoint a supervisor, but to also have this supervisor dedicate sufficient time to enforcement duties. The data indeed indicate that in a number of (mainly smaller) municipalities supervisors have been appointed, but that de facto these cannot dedicate any FTEs to enforcement, which seems to be irreconcilable with the spirit and objective of the Environmental Enforcement Act.

Besides the recommendations referring to the activities of the supervisors, a number of recommendations can be made to the Government of Flanders with reference to the sanctions policy.

Just like in 2009, there still seem to be significant regional differences between the public prosecutor's offices with regard to the referral of cases to the AMMC. Therefore it seems important that public prosecutor's offices are further made aware (possibly also through actions within the Ministry of Justice or through the Board of Prosecutors General) of the possibilities of having administrative sanctions imposed by the AMMC. The figures still suggest that, although the number of cases referred to the AMMC has risen, some cases are still left without further action or are dismissed by public prosecutor's offices (on the basis of the principle of opportunity), while they should actually be referred to the AMMC in keeping with the spirit and objective of the Environmental Enforcement Act. It seems important to have action taken in this context in order to be able to guarantee uniformity in the processing of environmental breaches within the Flemish Region.

Just like in 2009 the VHRM also recommends to update 'Priorities Document on the Prosecution Policy for Environmental Law in the Flemish Region' (Prioriteitennota Vervolgingsbeleid Milieurecht in het Vlaamse Gewest) of 30 May 2000, taking into account the Environmental Enforcement Act and the classification document of 2010 that was drawn up by the public prosecutor.<sup>105</sup> The VHRM has already taken the necessary steps in view of the updating of this Priorities Document and a new concept is expected to be submitted to the competent authorities in the spring of 2012. The VHRM recommends the Government of Flanders to readily attend to the formal introduction of this updated Priorities Document, in consultation with the competent federal Minister for Justice.

It is advised to take measures so as to promote the smoother flow of cases with the AMMC. Currently, many cases are already being referred by the public prosecutor's offices (and the VHRM recommends that more cases be referred). Combined with insufficient staff, it is impossible for the AMMC to process these cases within the (indicative) period laid down by the Flemish Parliament Act. As a result, this has caused a great backlog. In time, this could of course seriously jeopardise the realisation of the objectives of the Environmental Enforcement Act, especially since an effective administrative processing method had been put forward as an alternative for the dismissal of environmental breaches by the public prosecutor's offices. Therefore it is important, in view of a smooth flow of cases, to provide the AMMC with sufficient expert personnel on the one hand, and to examine alternative methods of processing (such as an administrative transaction) on the other. Work is already being done in both fields: in late 2011, the AMMC received more staff and it has proposed an amendment of the Flemish Parliament Act so as to allow it to also process less severe cases via a proposal of an administrative transaction.<sup>106</sup> However, it seems important that the Government of Flanders continues to closely monitor the flow of these cases by the AMMC. In fact, if the flow of cases is not substantially increased, it is to be feared that the objective - viz. a stronger enforcement policy through appropriate sanctions - may be jeopardised. In addition it is important for public prosecutor officers to know that the environmental offences they refer to the AMMC will be swiftly

<sup>105</sup> Environmental Enforcement Programme 2010, Flemish High Council of Environmental Enforcement, January 2010, pages 103-104.

<sup>106</sup> Flemish Parliament Act of 20 April 2012 containing various provisions regarding environment and nature, Articles 30-32. Publication in the Belgian Official Journal, 22 May 2012.

processed, and if appropriate, be actually fined.

### 5.2.2 Points of attention

Besides the above recommendations addressed to the Government of Flanders, this report has mentioned some points of attention that can be dealt with by the VHRM itself. In 2010, the VHRM also took many of the recommendations that were formulated in the Environmental Enforcement Report 2009 to heart. These led to the processing of cases in working groups, in the plenary meeting or with the help from external experts.<sup>107</sup>

In the first instance it was already emphasised in the first Environmental Enforcement Report (2009), but it also applies to the present environmental enforcement report, namely how the quality of such a report depends on the quality of the supplied data. The VHRM stresses once more that with an eye to formulating recommendations to improve the effectiveness of environmental enforcement, it is of great importance to have a good insight into the environmental enforcement data. The following is important in this context:

- ▶ That the questioned supervisors provide complete and timely information to the VHRM in view of the drawing up of the Environmental Enforcement Report. Unfortunately, the response was not better in 2010 than in 2009 for all the supervisors. Therefore 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 deliver the data requested by the VHRM.
- ▶ Precisely because it was convinced of the importance of using uniform concepts, in order to be able to compare data, the VHRM has designed a glossary with concepts that are important for environmental enforcement. Supervisors and other interested parties are invited to consult this glossary<sup>108</sup>. Naturally, it is important to enter data in conformity with the definitions from this glossary when responding to the VHRM survey.
- ▶ It is also important that an agreement is reached between supervisors and public prosecutor's offices on a uniform set of codes for the various breaches of environmental law in order to enhance the uniformity and comparability of the figures. Within this very context the VHRM is currently already working on a uniform nomenclature.
- ▶ In time, the VHRM also wants to gain a better insight into the nature and environmental impact of the breaches of environmental law in order to get a better idea of the effectiveness of the (enforcement of) environmental legislation, and the way in which this actually leads to an improvement of the environmental quality.

In the Environmental Enforcement Report 2009 it was already indicated that the VHRM had established that many enforcement actors were often faced with practical problems in the field. Therefore, the VHRM has set itself the goal of improving the quality of enforcement, among other things by organising workshops and congresses. Some points of attention were (again) put forward in this Environmental Enforcement Report. Some of the points of focus mentioned in the Environmental Enforcement Report 2009 were already studied more closely by the VHRM in 2010 and 2011. A number of points of attention which the VHRM wants to focus on in the future, as already revealed by this Environmental Enforcement Report, are the following:

- ▶ It needs to be further examined to what extent it is a good thing to combine the function of supervisor with other functions, since the time some actors dedicate to enforcement duties seems to be minimal. In this context the question arises as to whether environmental en-

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<sup>107</sup> See the website for the activities of the VHRM in general: <http://www.vhrm.be>

<sup>108</sup> <http://www.vhrm.be/voor-de-toezichthouder/glossarium>

forcement does not require such specific knowledge, experience and expertise (especially in complex enforcement duties) that it would be more advisable to have supervisors engage in enforcement full-time instead of regarding environmental enforcement as an additional duty besides other duties.

- ▶ Attention needs to be focused on why certain local police supervisors can dedicate on average only very limited time to performing actual supervisory duties. Another question that is raised is to what extent some expertise and knowledge building in certain police districts could also lead to a better quality of environmental enforcement.
- ▶ It must also be examined why the instrument ‘requests/petitions for the imposition of administrative measures’ addressed to the provincial governor, is hardly used. The question arises as to whether certain barriers exist for third parties to using this instrument, as a result of which it is not used in practice.
- ▶ Taking into account the outcomes of the study which the VHRM performs into local environmental enforcement, attention should also be paid (in keeping with the recommendation to the Government of Flanders) to how municipal supervisors could act against unlicensed plants. In the case of an operation without environmental licence in the following specific circumstances:
  - ▶ the complete absence of a licence, if a licence was never applied for;
  - ▶ the complete absence of a licence following a refusal in the second instance or a refusal in the first instance, against which no appeal was lodged;
  - ▶ the operation of a plant or the execution of an activity, when a general ban applies to this;
  - ▶ the absence of a licence for a highly nuisance-causing sub-activity

This concerns an environmental offence for which an official report needs to be drawn up. Furthermore, it is advised to immediately impose administrative measures (when choosing the instrument, the principle of proportionality is to be respected in keeping with Article 16.4.4 of the Environmental Enforcement Act).

- ▶ Taking account of the results of the aforementioned study, it must also be examined why de facto no time is available for enforcement duties in certain (mainly smaller) municipalities where supervisors have been appointed.
- ▶ Taking account of the outcomes of the study day on targeted enforcement organised by the VHRM, the question is raised as to whether guidelines/criteria, as well as programmes can be developed (also considering foreign experiences), which may increase the effectiveness of environmental enforcement (also from a cost-benefit perspective).
- ▶ It should be examined whether guidelines can be developed on how supervisors are to apply the enforcement instruments made available in the Environmental Enforcement Act. Little use seems to be made of certain instruments, whereas other instruments are used often by some supervisors and hardly ever by others. It may be advisable to develop relevant guidelines that indicate which instrument is used at a specific time and how the best possible combination of the available enforcement instruments can be achieved.
- ▶ Another element that requires further study is the fact that the identification report is hardly used as an instrument for environmental infringements. The question that arises here is whether this is due to a small number of infringements, or to the fact that supervisors make little use of the possibility (not obligation) of drawing up an identification report when they identify an environmental infringement. The reasons for the relatively limited use of this new instrument which has been introduced by the Environmental Enforcement Act should be map-

ped out better. However, it is also possible that, given the limited enforcement resources, priorities must be set and it is therefore not illogical that environmental offences that have an actual impact on the environment are prioritised to environmental infringements without such a negative impact/detriment.

- ▶ Finally, in keeping with the recommendation to the Government of Flanders, the VHRM should, in the context of its working groups, also always pay attention to an optimal harmonisation between the criminal and the administrative enforcement. This requires, on the one hand, that attention is mainly devoted to those public prosecutor's offices that have not found their way to the AMMC at all or at least not to a sufficient extent. In keeping with the spirit and objective of the Environmental Enforcement Act all environmental offences that are dismissed for reasons of opportunity should in principle also be referred by the public prosecutor's office to the AMMC. On the other hand, the quick imposition of sanctions by the AMMC for environmental violations continues to be crucial. Therefore, this will be closely monitored in the future by the VHRM.



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## Glossary - 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 (Division of Maritime Access 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:	Vlaams Agentschap Zorg en Gezondheid (Flemish Agency for Care and Health)
OVAM:	Openbare Vlaamse Afvalstoffenmaatschappij (Public Waste Agency of Flanders)
MHHC:	Milieuhandhavingscollege (Environmental Enforcement Court)
SG van het departement LNE:	Secretaris-generaal van het departement Leefmilieu, Natuur en Energie (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 Municipalities)

W&Z: Waterwegen en Zeekanaal nv (Waterways and Sea Canal plc)

### **Environmental enforcement terminology**

DABM Decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid (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)

PV Proces-verbaal (Official report)

### **Other**

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, managed by a GPS service provider, must be directly and immediately sent to the Manure Bank.

B.S. Belgisch Staatsblad (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 frame work of centralised data collection. Besides the purpose of control of individual shipments, the data are used to perform operational and strategic analyses.

n.g. Not given

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	Deerlijk	Herstappe
Aalter	Deinze	Hoogstraten
Aarschot	Denderleeuw	Houthulst
Alken	Dendermonde	Hove
Antwerp	Dessel	Huldenberg
Anzegem	Destelbergen	Ingelmunster
Ardoioe	Diepenbeek	Kapellen
Arendonk	Diest	Kaprijke
As	Duffel	Kasterlee
Asse	Eeklo	Keerbergen
Assenede	Erpe-Mere	Kinrooi
Avelgem	Evergem	Koekelare
Baarle-Hertog	Galmaarden	Koksijde
Balen	Gavere	Kontich
Beernem	Geel	Kortenaken
Beerse	Geetbets	Kortenberg
Beringen	Genk	Kortesseem
Berlaar	Ghent	Kortrijk
Bilzen	Geraardsbergen	Kruike
Blankenberge	Gistel	Laakdal
Boechout	Gooik	Laarne
Bonheiden	Grimbergen	Lanaken
Boom	Grobbendonk	Landen
Boortmeerbeek	Haacht	Langemark-Poelkapelle
Borgloon	Haaltert	Lebbeke
Bornem	Halle	Lede
Boutersem	Ham	Leopoldsburg
Brakel	Hamme	Leuven
Brasschaat	Hamont-Achel	Lichtervelde
Brecht	Hasselt	Liedekerke
Bredene	Heers	Lier
Bree	Heist-op-den-Berg	Lille
Bruges	Hemiksem	Lochristi
Damme	Herentals	Lokeren
De Panne	Herenthout	Londerzeel
De Pinte	Herne	Lubbeek

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Lummen	Sint-Gillis-Waas	Zonnebeke
Maarkedal	Sint-Katelijne-Waver	Zottegem
Malle	Sint-Laureins	Zulte
Mechelen	Sint-Martens-Latem	Zwalm
Meerhout	Sint-Niklaas	Zwevegem
Menen	Sint-Pieters-Leeuw	
Merksplas	Sint-Truiden	
Mesen	Staden	
Middelkerke	Steenokkerzeel	
Mol	Temse	
Moorslede	Ternat	
Mortsel	Tervuren	
Neerpelt	Tessenderlo	
Nieuwpoort	Tienen	
Nijlen	Tongeren	
Ninove	Torhout	
Ostend	Vilvoorde	
Oostkamp	Vleteren	
Oostrozebeke	Voeren	
Opwijk	Vorselaar	
Oudenaarde	Vosselaar	
Oud-Heverlee	Waarschoot	
Oud-Turnhout	Waregem	
Overijse	Wemmel	
Pittem	Westerlo	
Poperinge	Wetteren	
Putte	Wevelgem	
Puurs	Wijnegem	
Ravels	Wortegem-Petegem	
Riemst	Zandhoven	
Roeselare	Zelzate	
Ronse	Zemst	
Rumst	Zingem	
Scherpenheuvel-Zichem	Zoersel	
Schildre	Zomergem	
Schoten	Zonhoven	

## Annex 2: Responding police districts

Police district Aalst	Police district Druivenstreek
Police district Aalter/Knesselare	Police district Gaoz
Police district Aarschot	Police district Gavers
Police district Assenede/Evergem	Police district Geel
Police district Balen/Dessel/Mol	Police district Gent
Police district Beersel	Police district Geraardsbergen/Lierde
Police district Beringen/Ham/Tessenderlo	Police district Gingelom/Nieuwerkerken/ Sint-Truiden
Police district Berlaar/Nijlen	Police district Grens
Police district Beveren	Police district Grensleie
Police district Bierbeek/Boutersem/Holsbeek/ Lubbeek	Police district Haacht
Police district Bilzen/Hoeselt/Riemst	Police district Hageland
Police district Blankenberge/Zuienkerke	Police district Hamme/Waasmunster
Police district Bodikap	Police district Hamont-Achel/Neerpelt/Overpelt
Police district Brasschaat	Police district Hazodi
Police district Bredene/De Haan	Police district Heist
Police district BRT	Police district Hekla
Police district Bruges	Police district HERKO
Police district Damme/Knokke-Heist	Police district Herzele/Sint-Lievens-Houtem/ Zottegem
Police district Demerdal - DSZ	Police district Het Houtsche
Police district Denderleeuw/Haaltert	Police district Hoegaarden/Tienen
Police district Dendermonde	Police district Houthalen-Helchteren
Police district Dijleland	Police district Ieper
Police district Dilbeek	Police district Kanton Borgloon



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Police district Kempen N-O	Police district Regio Rhode en Schelde
Police district Kempenland	Police district Regio Tielt
Police district Klein Brabant	Police district Regio Turnhout
Police district Laarne/Wetteren/Wichelen	Police district RODE
Police district Leuven	Police district Ronse
Police district Lier	Police district Rupel
Police district Lokeren	Police district Schelde-Leie
Police district Lommel	Police district Sint-Gillis-Waas/Stekene
Police district Maasland	Police district Sint-Niklaas
Police district Maasmechelen	Police district Sint-Pieters-Leeuw
Police district Machelen/Vilvoorde	Police district Spoorkin
Police district Maldegem	Police district TARL
Police district Meetjesland-Centrum	Police district Tervuren
Police district MINOS	Police district Tongeren/Herstappe
Police district MIRA	Police district Vlaamse Ardennen
Police district Neteland	Police district VLAS
Police district Ninove	Police district Voeren
Police district Noord	Police district Voorkempen
Police district Noorderkempen	Police district West-Limburg
Police district Noordoost-Limburg	Police district WOKRA
Police district Oostende	Police district ZARA
Police district Pajottenland	Police district Zaventem
Police district Polder	Police district Zuiderkempen
Police district Puyenbroeck	Police district Zwijndrecht

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