VHRM

Environmental Enforcement Report 2009

Flemish High Council of Environmental Enforcement

Flemish government

FLEMISH HIGH COUNCIL OF ENVIRONMENTAL ENFORCEMENT

ENVIRONMENTAL ENFORCEMENT REPORT 2009

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 (VHRM) was created on 1 May 2009 in implementation of the decree of 21 December 2007, which supplements the decree of 5 April 1995 containing general provisions on environmental policy with a Title XVI 'Monitoring, Enforcement and Safety Measures'[1] (Environmental Enforcement Decree), with the general objective of providing support to the Flemish Government and the Flemish Parliament.

The activities of the Flemish High Council of Environmental Enforcement include drawing up an annual environmental enforcement programme and an environmental enforcement report.

The Environmental Enforcement Programme 2010 was approved on 11 January 2010 by the plenary meeting of the VHRM and ratified by the Flemish Government on 26 March 2010. It was stipulated in the decree that the Environmental Enforcement Programme shall determine 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 the enforcement of environmental law at the provincial and municipal levels and the cooperation with and between the policy levels. The Environmental Enforcement Programme 2010 was used primarily to present the VHRM and the activities planned for 2010, both for the VHRM itself and for the different enforcement actors.

For the environmental enforcement report the legislator also clearly defined what is expected from such a report. The environmental enforcement report should at least contain the following sections: 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 decision was taken within the set term with respect to the appeals against the imposition of administrative measures; an evaluation of public prosecutors' decision-making practice when it comes to whether or not to prosecute an identified offence; an overview and comparison of the environmental enforcement policy conducted by municipalities and provinces; an inventory of the insights obtained during enforcement activity which can be used to improve environmental legislation, policy visions and policy implementation; and recommendations for the further development of the environmental enforcement policy.

It should be clear that the environmental enforcement report may be regarded as a crucial element in the support, and possible correction, of the environmental enforcement policy to be pursued.

Even though this is the first environmental enforcement report, the VHRM has already obtained many useful and relevant figures from the environmental enforcement actors, and it has analysed these in order to draw the first (cautious) conclusions. However, given that the Environmental Enforcement Decree only came into force on 1 May 2009, the scope is still limited. As a result, the requested information only referred to the period from 1 May 2009 to 31 December 2009 (= the study period).

Obviously, the drafting of such a report is a learning process. The intention was to keep the enquiries among the environmental enforcement actors about their activities in the area of environmental enforcement in the 2009 study period brief. Of course, this has the disadvantage that certain aspects of environmental enforcement could not be analysed in detail. The learning process also implies that for the next environmental enforcement reports more concrete enquiries can be made. We hope that this will

[1] Publication BOJ 29 February 2009

lead to higher quality content for future environmental enforcement reports, and we would be happy to receive your suggestions and/or recommendations to achieve this.

It should also be pointed out that, to draw up this report, the Flemish High Council of Environmental Enforcement depends on the input provided by the environmental enforcement actors, in particular regional actors, municipalities, provinces, local police forces, the federal police and the public prosecutor's offices. These actors received a questionnaire adapted to their enforcement duties within the environmental enforcement landscape. Although many environmental enforcement actors spontaneously answered our request to provide information (and, in doing so, implemented the Environmental Enforcement Decree), the response was not complete among all authorities. As a result, the data included in this report are not entirely representative. When data are presented, the response level among the various authorities is specified. However, it is positive that many actors did cooperate, and that conclusions can be drawn with respect to environmental enforcement in the Flemish Region in the 2009 study period. The Flemish High Council of Environmental Enforcement therefore extends its sincere thanks to those actors who responded to our questionnaire and who, in doing so, have helped us draw up this report.

Prof. Dr. Michael G. Faure LL.M.

Chairman of the Flemish High Council of Environmental Enforcement

1 INTRODUCTION

1.1 THE DECREE OF 5 APRIL 1995 CONTAINING GENERAL PROVISIONS ON ENVIRONMENTAL POLICY

The origin of the Flemish High Council of Environmental Enforcement (VHRM) goes back to the decree of 21 December 2007, which supplements the decree of 5 April 1995 containing general provisions on environmental policy (DABM in its Dutch initials) with a Title XVI 'Monitoring, Enforcement and Safety Measures'[2].

The VHRM was created to support the Flemish Parliament and the Flemish Government in the coordination of the environmental enforcement policy and the interpretation of its content. 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 by setting up consultations with the environmental enforcement actors and by 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 Act of 13 February 2009 on the appointment of the members of the Flemish High Council of Environmental Enforcement[3]. In addition, the VHRM works with four working groups to study special matters: *'Identification and monitoring', '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[4].

Each year, the Flemish High Council of Environmental Enforcement 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 the enforcement of environmental law 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 on 11 January 2010. The Flemish Government ratified the document on 26 March 2010. The Environmental Enforcement Programme 2010 can be found on the VHRM website[5].

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 decision was taken within the set term with respect to the appeals against the imposition of administrative measures; an evaluation of public prosecutors' decision-making practice when it comes to whether or not to prosecute an identified offence; an overview and comparison of the environmental enforcement policy conducted by municipalities and provinces; an inventory of the insights obtained during enforcement activity which can

[2] Publication BOJ 29 February 2009

[3] Publication BOJ 19 March 2009

[4] http://www.vhrm.be/vhrm/leden-vertegenwoordigers-en-plaatsvervangers

[5] http://www.vhrm.be/documenten/milieuhandhavingsprogramma

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

This report must contain all relevant figures on the environmental enforcement policy conducted 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.

1.2 METHODOLOGY AND RELEVANCE OF THE ENVIRONMENTAL ENFORCEMENT REPORT 2009

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 since the coming into effect of the Environmental Enforcement Decree in 2009.

In order to achieve this objective – and its components as stipulated by the Decree – 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.

The following actors were questioned about their activities in the area of environmental law enforcement between 1 May 2009 and 31 December 2009:

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

A standard questionnaire was used in order to obtain comparable data. Enquiries were made, for instance, about the number of supervisors or Vlarem officials within the organisation, the number of FTEs

(full-time equivalents) assigned to enforcement duties, the number of inspections[6] carried out between 1 May 2009 and 31 December 2009[7], the number of official reports drawn up[8], the number of identification reports and the number of administrative measures and safety measures imposed. The sanctioning bodies were asked about their activities between 1 May 2009 and 31 December 2009[9]. 1 May was taken as the start date because that day the Environmental Enforcement Decree came into force.

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 Decree. These figures, accompanied by explanatory text, will be displayed graphically 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.

However, not all data come from this quantitative survey by the Flemish High Council of Environmental Enforcement. In order to obtain as complete a picture as possible – and in order to create the possibility to draw valuable conclusions and formulate recommendations – scientific literature and other rather qualitative sources were used as well. We specifically refer to the interesting data from the LAWFORCE project[10].

The Decree clearly defined 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 Decree.

1.2.2 Structure

First, an evaluation will be made of the environmental enforcement policy pursued over the past calendar year by the regional supervisors, the federal police and local police forces and the enforcement activities performed at the local level by provincial governors, provincial supervisors, municipal supervisors and supervisors of the intermunicipal associations. Figures will be provided relating to the number of supervisors per organisation, linked to the enforcement duties, the number of FTEs assigned to enforcement duties per organisation and the number of inspections carried out by these supervisors in the 2009 study period. This will also allow us to get an idea of the number of inspections carried out per supervisor. With regard to the federal police proactive inspections will be discussed. With regard to local environmental enforcement policy the number of Category 1, Category 2 and Category 3 establishments present on the territory will be pointed out as well. In addition, the supporting role of the provinces for the municipalities will be evaluated based on the reporting of the provinces in the framework of the Cooperation Agreement 2008-2013. The efforts of the intermunicipal associations in the area of

[6] It must be pointed out that the enquiries involved the number of environmental enforcement inspections carried out and not the number of breaches identified during those inspections.

[7] With respect to nature protection law it was asked to report on activities between 25 June 2009 and 31 December 2009, as the provisions of the Environmental Enforcement Decree only came into force for nature protection law with the coming into force of the decree of 30 April 2009 amending the decree of 5 April 1995 containing general provisions on environmental policy and amending various provisions related to environmental enforcement, published in the Belgian Official Journal on 25 June 2009.

[8] For some enforcement actors it is unclear whether the figures provided on the number of official reports drawn up include only initial official reports, or initial and follow-up official reports. As a result of these diverse interpretations there are significant differences that make comparison between the figures obtained difficult.

[9] With respect to nature protection law it was asked to report on activities between 25 June 2009 and 31 December 2009, as the provisions of the Environmental Enforcement Decree only came into force for nature protection law with the coming into force of the decree of 30 April 2009 amending the decree of 5 April 1995 containing general provisions on environmental policy and amending various provisions related to environmental enforcement, published in the Belgian Official Journal on 25 June 2009.

[10] http://www.environmental-lawforce.be

environmental enforcement since the coming into force of the Environmental Enforcement Decree in 2009 will also be discussed.

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

In Chapter 3 the emphasis is on the use of the 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 Decree. Based on this list, the standard questionnaires were drawn up. It concerns the following instruments: recommendations, exhortations, administrative measures (regularisation order, prohibition order, administrative coercive, or a combination), safety measures, administrative fines (and deprivation of benefits) and criminal penalties[11].

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

Next, Chapter 4 'Evaluation of the Flemish environmental sanctions policy in 2009' 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 of the Department of Environment, Nature and Energy (AMMC), the public prosecutor's offices and the Environmental Enforcement Court (MHHC).

The Environmental Enforcement Decree created a regional body[12] which started its activities on 1 May 2009. This new division within the Department of Environment, Nature and Energy can impose exclusive administrative fines for environmental infringements, and alternative administrative fines for environmental offences. In this context, it was therefore studied how this new body has made use of these sanctioning competences. The VHRM also received various data from the public prosecutor's offices, which allowed it to paint a broad picture of the sanctions policy.

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 Decree, 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.

1.2.3 Notes

Despite the high expectations in relation to 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 2009.

The Environmental Enforcement Decree 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

[11] Administrative fines (and deprivation of benefits) and criminal sanctions will be discussed in the chapter 'Evaluation of the Flemish environmental sanctions policy in 2009', as this is more in line with the list of contents of this Environmental Enforcement Report 2009, in which the evaluation of the sanctions policy is dealt with separately in Chapter 4.

[12] The Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy

and an evaluation of public prosecutors' decision-making practice when it comes to whether or not to prosecute an identified offence. However, the evaluation made here is not 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. It is also impossible to make an evaluation of the situation before the coming into force of the Environmental Enforcement Decree (baseline)[13] and after its coming into force, as the figures obtained only refer to the situation from 1 May 2009 to 31 December 2009. This is related to the fact that this is the VHRM's first Environmental Enforcement Report. In future, it will obviously be possible to make such comparisons. The situation as described in this report can therefore be considered a baseline for all (some of which new) environmental enforcement actors. As the situation created by the Environmental Enforcement Decree is only recent, the necessary caution must be exercised with respect to the figures and any conclusions and recommendations based on those figures. The idea is therefore that this information will be used as input for the VHRM's future environmental enforcement programmes. This makes a cyclic approach possible: the environmental enforcement report for the past calendar year should provide input for plans and actions for the next calendar year, which will then be described in the environmental enforcement programme.

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 in this report 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 some of the terms used in the environmental enforcement landscape are interpreted in different ways. It has also become clear that not all actors were able to report on the same data (in similar ways). 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'. The problem is that the environmental legislation that is being enforced under the Environmental Enforcement Decree is very diverse. This results in a different enforcement approach, which makes it more difficult to use a common set of terms.

In addition, it must be stated clearly that no normative evaluation can be made based on numbers and figures alone. For instance, it is a fact that an official report made by the local police and an official report made by the Environmental Inspectorate Division can refer to different infringements, for instance when it comes to legal or general complexity.

Most administrations were given the possibility to check the figures and information they had provided in the framework of the VHRM questionnaire in different draft versions of this report. VHRM members, representatives and deputies were consulted several times during the elaboration of the report. However, it was not possible for the VHRM to consult municipalities and police districts individually to comment on the draft versions. Precisely because of this, municipalities and police districts are not discussed individually either, but according to categories based on the number of inhabitants.

As the Environmental Enforcement Report 2009 is the first report to be published by the VHRM, and this was also the first time the environmental enforcement actors were questioned by the VHRM, it was decided to keep the questionnaire 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

[13] The problem here is that only some of the actors, such as, for instance, the Environmental Inspectorate Division, OVAM and ANB, draw up annual reports on environmental enforcement.

the data obtained, but also for the conclusions that can be drawn from them. This environmental enforcement report only allows for a reflection of what the environmental enforcement actors and supervisors did during the 2009 study period in the area of monitoring and sanctioning, not of how or why they did so. As the questionnaire 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.

A number of actors who answered the questionnaires of the Flemish High Council of Environmental Enforcement made some remarks themselves in support of their figures. Wherever possible and relevant, these can be found in the texts.

The study period ran from 1 May 2009 to 31 December 2009. Hence, this period does not allow for the impact of the Environmental Enforcement Decree to be studied yet.

It should therefore be clear that the Environmental Enforcement Report 2009 is not complete. For instance, the enforceability of the legislation itself has not been studied, nor has the burden of enforcement on the inspected bodies. No analysis could be made either of the effectiveness of the enforcement activity. This first report has its limitations, but it can serve as a starting point for mapping the enforcement activities of the different actors.

1.3 ENVIRONMENTAL ENFORCEMENT POLICY

Obviously, the activities of the environmental enforcement actors in Flanders are not random. The environmental enforcement policy in the Flemish Region is determined, among other things, by the Coalition Agreement of 15 July 2009[14] and the Policy Memorandum on Environment and Nature 2009-2014 of Minister Schauvliege[15].

Among other things, the Coalition Agreement for 2009-2014 'A vigorous Flanders in decisive times, for an innovative, sustainable and warm society' defines the general outline for environmental enforcement in Flanders, and determines that the environmental enforcement reports of the Flemish High Council of Environmental Enforcement shall specifically evaluate the Environmental Enforcement Decree and its practical implementation. The main policy objectives and priorities shall be described in the annual environmental enforcement programmes. When considered desirable, organisational cooperation agreements shall be embedded into the enforcement protocols established under auspices of the Flemish High Council of Environmental Enforcement. Furthermore, the Flemish Government states that adequate training, permanent 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 matters mentioned in the decree, the reports must also make an evaluation of the practical implementation of the Environmental Enforcement Decree.

The Policy Memorandum for 2009-2014 on Environment and Nature of the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, defines the elaboration of an effective administrative

[14] 'Coalition Agreement of 15 July 2009':

http://www.vlaanderen.be/servlet/Satellite?c=Solution_C&cid=1247734278469&pagename=Infolijn/View

[15] 'Policy Memorandum on Environment and Nature 2009-2014':

http://www.vlaanderen.be/servlet/Satellite?pagename=Infolijn%2FView&c=Solution_C&p=1186804409590&cid=1171947608450

enforcement of environmental infringements and offences as a strategic objective. The new legal framework – the Environmental Enforcement Decree – 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 Decree is also included in the policy memorandum as an operational objective. The main objectives and priorities of the environmental enforcement policy will be determined taking into account the recommendations in the annual environmental enforcement programmes, drawn up by the Flemish High Council of Environmental Enforcement. Enforcement practice will be evaluated for its effectiveness and efficiency, among other things via the annual environmental enforcement reports. Cooperation agreements between the different environmental enforcement actors will, when considered useful, be embedded into enforcement protocols. In the framework of the decree 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 establishments with more environmental relevance (such as Seveso and GPBV 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 self-monitoring inspections of companies are central. Attention must also be paid to the supervision of unlicensed facilities and activities which nevertheless require a licence.

In implementation of the Coalition Agreement of 15 July 2009 the Flemish Government opts for a partnership with strong local administrations, also in the area of environmental and nature policy. Important strategic objectives therefore include that the Flemish authorities fight compartmentalisation, create more internal collaboration and synergies, and support 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.

It should be clear that the Flemish High Council of Environmental Enforcement can play a role in the support of the Flemish Government and the Flemish Minister for Environment, Nature and Culture in the implementation of the Coalition Agreement and the Policy Plan.

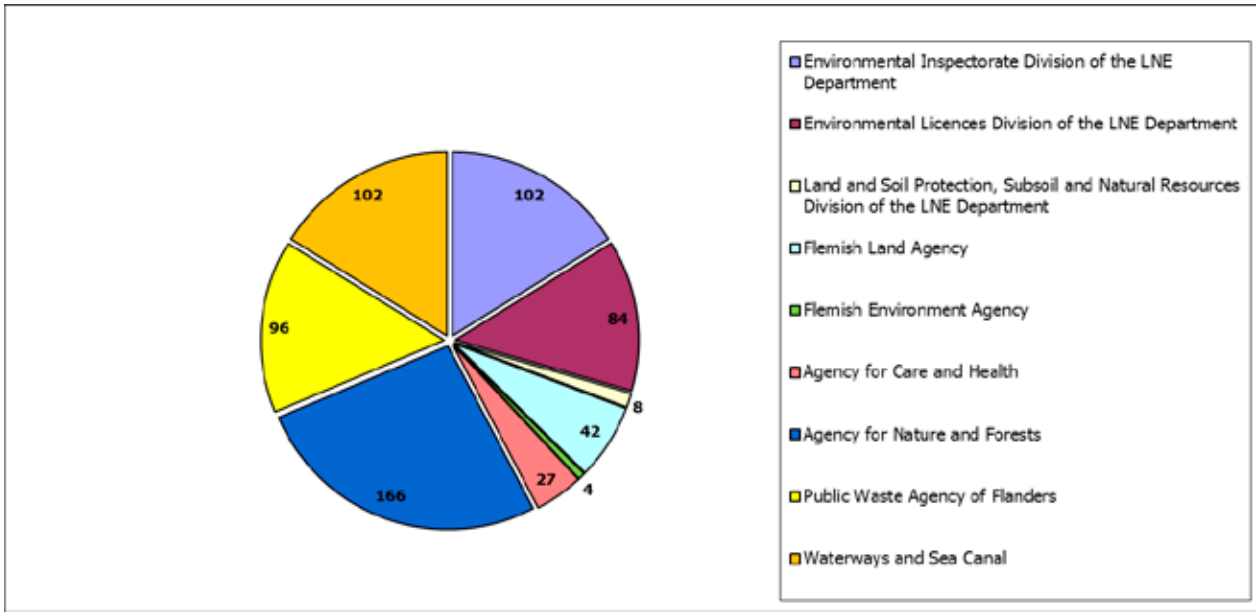
2 EVALUATION OF THE FLEMISH ENVIRONMENTAL ENFORCEMENT POLICY IN 2009

The purpose of this chapter is to evaluate the Flemish environmental enforcement policy from 1 May 2009 to 31 December 2009. However, it should be noted that it is currently not possible to make a real evaluation, in the strict sense of the word, of the entire environmental enforcement policy. Moreover, the term 'environmental enforcement policy' should be put into perspective, as the report only refers to the data obtained from the questionnaire that was sent to the individual enforcement actors, which, as we have indicated before, was very limited. As a result, it is not possible to report on the entire Flemish environmental enforcement policy in the 2009 study period.

2.1 EVALUATION OF REGIONAL ENVIRONMENTAL ENFORCEMENT POLICY

2.1.1 Appointed regional supervisors

The graph below shows the number of supervisors used by the individual regional enforcement actors during the study period.



Graph 1) Number of supervisors per regional enforcement actor

The Environmental Enforcement Decree determines 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. Article 16.3.2 further stipulates that only persons with the necessary qualifications and characteristics to adequately perform the supervisory duties can be appointed supervisors.

In the questionnaire, the regional supervisory bodies were therefore asked about the number of supervisors, appointed by the Flemish Government, they had at their disposal from 1 May 2009 onwards.

With a view to the interpretation of the graph above it should be mentioned that the Agency for Roads and Traffic had no supervisors at its disposal yet during the 2009 study period. This actor was therefore not included in the graph above.

From these figures it can be concluded that most regional supervisory bodies could count on a large number of supervisors[16] to perform their enforcement duties since the coming into force of the Environmental Enforcement Decree in 2009.

However, it seems useful to compare the number of appointed supervisors to the supervisory duties of each regional enforcement actor. This would allow us to get an idea of the proportionality. Unfortunately, the VHRM does not have such an instrument at its disposal to study this aspect. What it can do is give an idea of the average number of inspections[17] per supervisor, compared to the duties of each regional enforcement actor. This could result in a rough picture of the proportion and an answer to the question whether the regional actor with the most supervisory duties also has the largest number of supervisors at his disposal. However, it should be noted that this is a very rudimentary discussion, as the actors' enforcement activities are not necessarily reflected only in inspections and administrative measures.

The statutory supervisory duties listed below (list of legislation) come from the 'inventory concerning enforcement actors' drawn up by the permanent secretariat of the Flemish High Council of Environmental Enforcement, with input from and approved by the VHRM members, representatives and deputies and the members and representatives of the working groups.

1. The Environmental Inspectorate Division of the Department of Environment, Nature and Energy had 102 supervisors at its disposal to monitor compliance with the following legislation:

- of 5 April 1995 containing general provisions on environmental policy: Title III – company-internal environmental care; Title IV – environmental impact and safety reporting; Title XV – environmental damage.
- Law of 28 December 1964 on air pollution abatement.
- Law of 26 March 1971 on the protection of surface waters against pollution.
- Law of 18 July 1973 on noise nuisance abatement.
- Decree of 2 July Decree 1981 on the prevention and management of waste.
- Decree of 24 January 1984 containing measures with regard to groundwater management.
- Decree of 28 June 1985 on the environmental licence.
- Decree of 4 April 2003 on surface minerals.
- Decree of 22 December 2006 on the protection of water against agricultural nitrate pollution, without prejudice to the application of Article 60bis, 62 of the aforementioned decree.
- Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer.
- 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.
- 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.
- Regulation (EC) No 166/2005 of the European Parliament and of the Council of 29 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC

[16] Excluding the Agency for Roads and Traffic

[17] As we have already mentioned in the introduction, the term 'inspection' is interpreted differently by the various enforcement actors, and there is currently no unambiguous, uniform definition for this term. For instance, the Environmental Inspectorate Division of the LNE Department uses the term 'inspection' to refer to on-site inspections and administrative inspections, whereas the Agency for Nature and Forests uses this term for inspections of hunting and fishing permits, among other things.

- Council Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases.
- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.
- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.
- Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply.

Between 1 May 2009 and 31 December 2009 the Environmental Inspectorate Division carried out 8,436 inspections of the above legislation.

For some laws and acts the supervisory duty is shared between various regional actors. However, it must be noted that for most legal provisions concerning environmental health law, the Environmental Inspectorate Division is always the only regional actor responsible for the integral supervisory duty.[18] In this case, there seems to be a reasonable proportion between the number of appointed supervisors (102) and the number of inspections carried out (8,436). The average number of inspections per supervisor during the 2009 study period is 82.71.

2. The Environmental Licences Division of the Department of Environment, Nature and Energy had 84 supervisors at its disposal for the following legislation:

- Decree of 5 April 1995 containing general provisions on environmental policy: qualifications of the environmental coordinator; training, professional experience, other conditions and obligations the authorised person must comply with.
- Law of 28 December 1964 on air pollution abatement: training, professional experience, other conditions and obligations the authorised person must comply with.
- Law of 18 July 1973 on noise nuisance abatement: training, professional experience, other conditions and obligations the authorised person must comply with.
- Decree of 24 January 1984 containing measures with regard to groundwater management: training, professional experience, other conditions and obligations the authorised person must comply with.
- Decree of 28 June 1985 on the environmental licence: training, professional experience, other conditions and obligations the authorised person must comply with; implementing orders of Title II of Vlarem.
- Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer: training, professional experience, other conditions and obligations the authorised person must comply with.

[18] Excluding the Decree on Manure, for which the Secretary General of the LNE Department and the Flemish Land Agency also have an integral supervisory competence. Until today, no actor has been appointed for the monitoring of compliance with the Law of 10 January 1977 containing provisions on the compensation of damage caused by groundwater abstraction and pumping. The Environmental Inspectorate Division does not have competence either with respect to the Decree on soil remediation. The integral competence over the Decree on surface minerals falls to the Land and Soil Protection, Subsoil and Natural Resources Division.

- Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases: training, professional experience, other conditions and obligations the authorised person must comply with.

The emphasis within the Environmental Licences Division (AMV) is on training, professional experience, other conditions and obligations the authorised person must comply with. When performing its inspection duties, the Environmental Licences Division distinguishes between persons performing services related to nuisance-causing plants (EIA expert, environmental coordinator) and persons performing services related to private citizens.

The evaluation of authorised persons who perform services related to nuisance-causing plants is done by the Environmental Licences Division, as an integrated part of the treatment of environmental licence applications. As nearly all advisers of the Environmental Licences Division give advice on environmental licence applications, and in the framework of this activity frequently come into contact with authorised persons, all advisers were appointed supervisors.

Since 1 July 2009 the Environmental Licences Division is the only actor to perform this supervisory duty. In order to perform this new enforcement duty, 84 supervisors were appointed (among them all advisors for environmental licences and authorisations). Since July 2009 these supervisors have carried out a total of 318 inspections[19].

3. The Agency for Nature and Forests had 166 supervisors at its disposal for the enforcement of the following legal provisions:

- Decree of 5 April 1995 containing general provisions on environmental policy: Title XV – environmental damage.
- Forest Code of 19 December 1854.
- Law of 1 July 1954 on river fishing.
- Hunting law of 28 February 1882.
- Law of 12 July 1973 on nature conservation.
- Decree of 2 July 1981 on the prevention and management of waste: geographically vulnerable areas.
- Law of 28 July 1981 ratifying the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and its Appendices, drawn up in Washington on 3 March 1973.
- Decree on Forests of 13 June 1990.
- Decree on Hunting of 24 July 1991.
- Decree on nature conservation and the natural environment of 21 October 1997.
- Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

The area of competence of the Agency for Nature and Forests (ANB) mainly falls within nature protection law. This is an exclusive supervisory duty among the regional enforcement actors. ANB had 166

[19] Among these were 306 inspections of burner engineers, for which AMV called in the assistance of an accredited inspection body. The supervisors appointed by AMV played an important role in the preparation and further follow-up of the results of these inspections.

supervisors at its disposal. Between 25 June and 31 December 2009 7,471 inspections were carried out. This results in an average number of inspections per supervisor of 45.01[20]. Taking into account the specific enforcement landscape that provides the framework for ANB's competence, namely the exclusive regional competence for nature protection law, the proportion seems to be reasonable.

4. The Public Waste Agency of Flanders had 96 supervisors at its disposal to monitor compliance with the following laws and acts:

- Decree of 2 July 1981 on the prevention and management of waste: Articles 12 and 13; collection from and presentation of household waste by private citizens, as organised by the municipal authorities; routes of waste streams subject to a take-back obligation; provisions on waste prevention and recycling objectives; collection of ship-generated waste and cargo residues and discharge of it to port reception facilities; reporting on produced, collected and processed waste; waste register; compliance with sectoral implementation plans; collection and claiming of environmental levies.
- Decree of 27 October 2006 on soil remediation and soil protection.

The Public Waste Agency of Flanders (OVAM) shares its supervisory duty with respect to the Waste Decree with the Environmental Inspectorate Division, which is responsible for the integral supervisory duty in relation to this decree, with the exception of Chapter IX of this decree in relation to environmental levies. Where the Soil Decree is concerned, OVAM has an exclusive supervisory duty.

OVAM had 96 supervisors at its disposal during the 2009 study period, and initiated 706 inspections. This results in an average of 7.35 inspections per supervisor between 1 May 2009 and 31 December 2009. In this case, the proportion between the average number of inspections and the number of supervisory duties may need to be investigated further.

5. Waterways and Sea Canal informed that 102 supervisors had been appointed. They were in charge of monitoring compliance with the following provisions:

- Law of 26 March 1971 on the protection of surface waters against pollution: navigable watercourses, waterways and ports, and related installations.
- Decree of 2 July 1981 on the prevention and management of waste: waterways, ports, and related installations.

Based on this law and this decree, Waterways and Sea Canal (W&Z) has been assigned a number of enforcement competences for navigable watercourses, waterways and ports, and related installations. The Environmental Inspectorate Division has similar competences in this area. OVAM also has a number of competences, for instance in relation to ship-generated waste and cargo residues.

Waterways and Sea Canal had 102 supervisors at its disposal in the 2009 study period. However, only 2 inspections were carried out, which brings the average number of inspections per supervisor to 0.02. This raises doubts as to the reasonable proportion between the enforcement duties and the average number of inspections per supervisor. However, this actor was mainly assigned supervisory duties in the framework of the control of infringements in the open countryside (discharge into the surface water, illegal dumping,...). A strong presence in the field increases the chance of identifying breaches, and hence the effectiveness of enforcement.

[20] ANB appointed 166 supervisors. In order not to distort the picture, it should be pointed out that 114 of these supervisors were foresters who spend only a limited amount of their time on enforcement. Their activity in the area of enforcement is estimated at 8 FTEs.

6. The Flemish Environment Agency had four supervisors at its disposal to monitor compliance with the following legislation:

- Law of 26 March 1971 on the protection of surface waters against pollution: category 1 unnavigable watercourses and related installations.
- Decree of 2 July 1981 on the prevention and management of waste: category 1 unnavigable watercourses and related installations.

The enforcement activities of the Flemish Environment Agency (VMM) are centred on category 1 unnavigable watercourses and related installations. Here as well, the Environmental Inspectorate Division has integral competence for this law and this decree, and OVAM part, while VMM only has competence for a single aspect.

In the 2009 study period VMM had 4 supervisors to enforce these provisions. The problem that has arisen is that no inspections were officially registered by VMM during that period, nor were inspection reports drawn up for these inspections.

However, VMM said that in future it would focus, in the first place, on infringements with a big impact on the good state of the category 1 watercourses, such as the causes of fish mortality and infringements relating to protected watercourses. Attention will be paid also to infringements relating to watercourses with drinking water quality, the overflow problem and illegal dumping along waterways.

7. The Flemish Agency for Care and Health had 27 supervisors at its disposal to monitor compliance with the following provisions:

- Law of 18 July 1973 on noise pollution abatement (Flemish Government Act of 7 November 1984 and Royal Act of 24 February 1977 on electronically amplified music).
- Decree of 2 July 1981 on the prevention and management of waste: medical waste.
- Decree of 28 June 1985 on the environmental licence: health aspects.

The Agency for Care and Health (AZ&G) also has a shared supervisory duty with the Environmental Inspectorate Division when it comes to noise nuisance, the Waste Decree and the Decree on the environmental licence. Whereas the supervisory duty of the Environmental Inspectorate Division is integral, that of the Agency for Care and Health is very specific and limited.

In 2009 the Agency for Care and Health had 27 supervisors at its disposal, who carried out a total of 371 inspections between 1 May 2009 and 31 December 2009. This means an average of 13.74 inspections per supervisor. Here as well, doubts may be raised as to the reasonable proportion between the enforcement duties and the average number of inspections per supervisor.

8. The Agency for Roads and Traffic did not have any supervisors at its disposal yet in the 2009 study period, but it did have competence for the following legislation:

- Law of 26 March 1971 on the protection of surface waters against pollution: ditches and artificial channels for the discharge of rainwater along the public highway and related installations.
- Decree of 2 July 1981 on the prevention and management of waste: the public highway and related installations.

The enforcement duties of the Agency for Roads and Traffic are centred on the area of the public highway. In this area, the Environmental Inspectorate Division also has competence for this legislation.

Since the coming into force of the Environmental Enforcement Decree on 1 May 2009 the Agency for Roads and Traffic has not appointed any supervisors. As a result, no enforcement activities have been undertaken yet by the Agency for Roads and Traffic.

9. The Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy had 8 supervisors to monitor compliance with:

- Decree of 28 June 1985 on the environmental licence: danger of landslides or collapse.
- Decree of 4 April 2003 on surface minerals.

Where the Decree on the environmental licence is concerned, the enforcement activity of the Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy (ALBON) has been clearly delimited. However, ALBON has integral competence for the Decree on surface minerals. The division shares this supervisory duty with the Environmental Inspectorate Division.

ALBON had 8 supervisors at its disposal in the 2009 study period, who carried out a total of 233 inspections. This results in an average of 29.13 inspections per supervisor between 1 May 2009 and 31 December 2009. Hence, it can be said that the number of supervisors and the supervisory duties are more or less in proportion to each other.

10. The Flemish Land Agency had 42 supervisors at its disposal to monitor compliance with the following legislation:

- Decree of 2 July 1981 on the prevention and management of waste: use as a secondary raw material, as fertiliser, as a soil-improving substance or as soil.
- Decree of 22 December 2006 on the protection of water against agricultural nitrate pollution, without prejudice to the application of Article 60bis, 62 of the aforementioned decree .
- 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: fertilisers.
- Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste: import, export and transhipment of manure.

In the framework of the Waste Decree and Regulations No 1774/2002 and No 1013/2005, the Flemish Land Agency (VLM) has competence for only a limited supervisory duty, namely that concerning fertilisers. Once again, it is the Environmental Inspectorate Division which has integral competence for this legislation. When it comes to the Decree on manure, the VLM has an integral supervisory duty.

During the 2009 study period the Flemish Land Agency had 42 supervisors at its disposal, who carried out a total of 2,089 inspections. This means that an average of 49.74 inspections per supervisor was reached. Here as well, it can be said that there is a reasonable proportion between the number of supervisors and the supervisory duties.

Evaluation

These data show that there seem to be significant differences between the number of supervisors, the statutorily assigned competences and the number of inspections that were actually carried out. There are actors with a very high number of supervisors and a limited number of inspections. On the other hand, there are also actors who carry out more inspections with a proportionally lower number of supervisors. The question arises whether this relationship is influenced by the fact that some supervisors are involved in their supervisory duties almost on a full-time basis, while for others these represent only an additional duty on which they spend only a limited proportion of their available time. The question can also be asked whether it is better to spread the monitoring activities over a lot of different supervisors who only dedicate a minimum amount of time to enforcement, or to appoint supervisors who are involved in enforcement activities on a nearly full-time basis.

The VHRM has set itself the goal to dedicate further study to the relationship between the enforcement activities, because the number of inspections is not necessarily a reference point. In other words, a small number of inspections does not always indicate a lack of enforcement. Actors can also be involved in enforcement in other ways, such as by providing expertise and assistance to, for instance, public prosecutor's offices and examining magistrates and – especially – by taking administrative measures

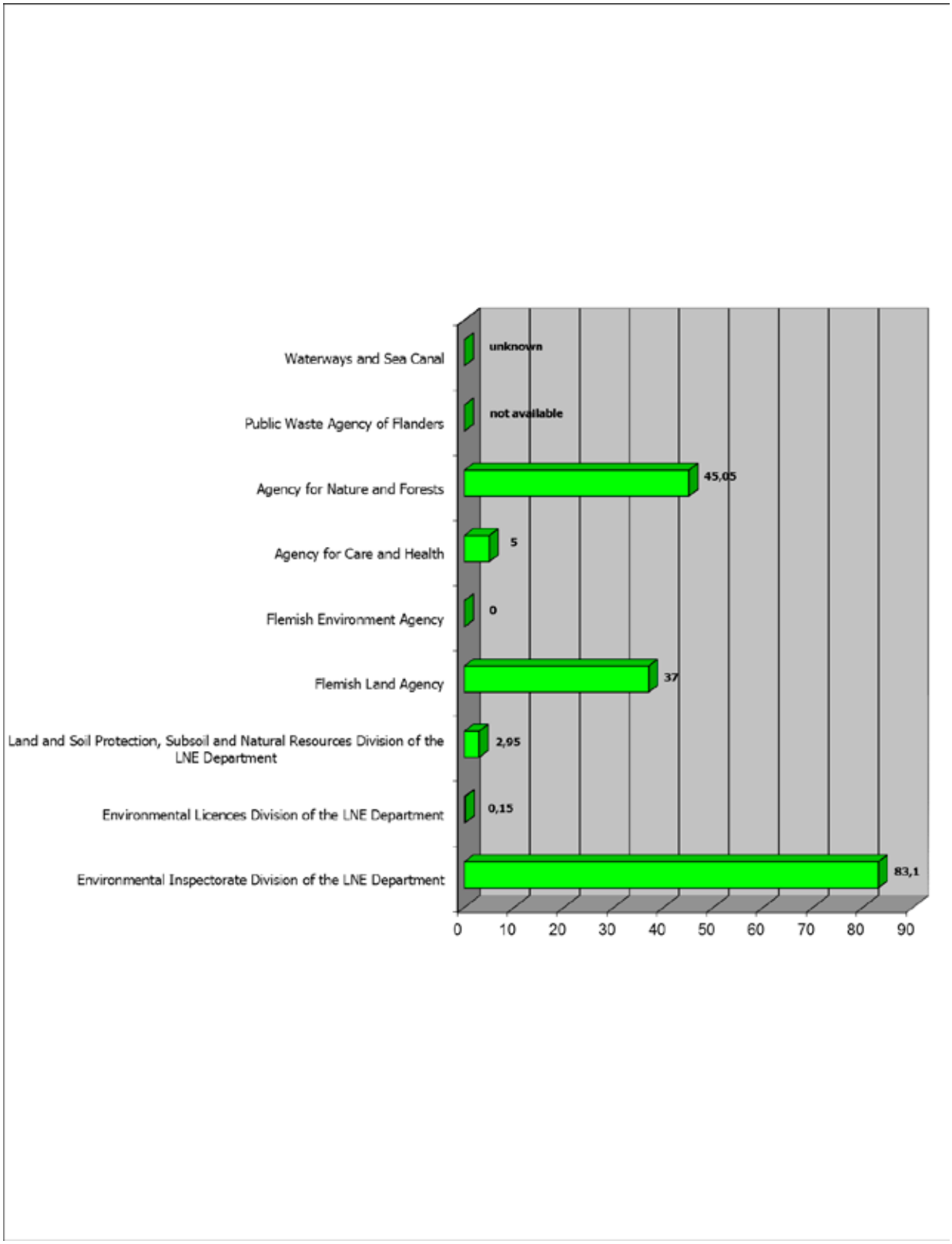
and/or safety measures in a (limited) number of cases with environmental relevance. However, this requires further investigation.

Therefore, a first conclusion is that the number of supervisors and the number of formal (statutory) supervisory duties is not always in proportion to the number of inspections that have actually been carried out.

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 activities that were effectively performed, the regional supervisory bodies were also asked to indicate how many FTEs had been used for enforcement activities during the 2009 study period. It is true that the Environmental Enforcement Decree does not determine the number of FTEs that should be used for enforcement activities, but the number of FTEs does provide a clearer and more balanced picture of the effective efforts in the area of environmental enforcement.

The time dedicated to environmental enforcement duties by the regional supervisors – expressed in FTEs – can be presented as follows:



Graph 2) Efforts related to environmental enforcement duties in FTEs

In order to better place the graph above into its context, it should also be mentioned that the Public Waste Agency of Flanders informed that no data were available regarding the number of FTEs used for enforcement activities during the 2009 study period, and that Waterways and Sea Canal considers the number of FTEs used for enforcement activities during the 2009 study period insignificant, as no training had been provided yet to the supervisors.

The number reported for ANB is 45.05 FTEs. However, this figure only comprises the efforts in FTEs of the nature inspectorate. Besides these efforts, foresters of the Management Division are also used for environmental enforcement where their supervisory duties in the areas controlled by ANB are concerned. Although this figure is roughly estimated at 8 FTEs, it was not included in the total as it cannot be calculated exactly.

For a number of actors, the proportion between the number of supervisors appointed and the FTEs used for enforcement activities in the 2009 study period is clearly not very coherent[21]. For other actors, by contrast, a balance can be found[22].

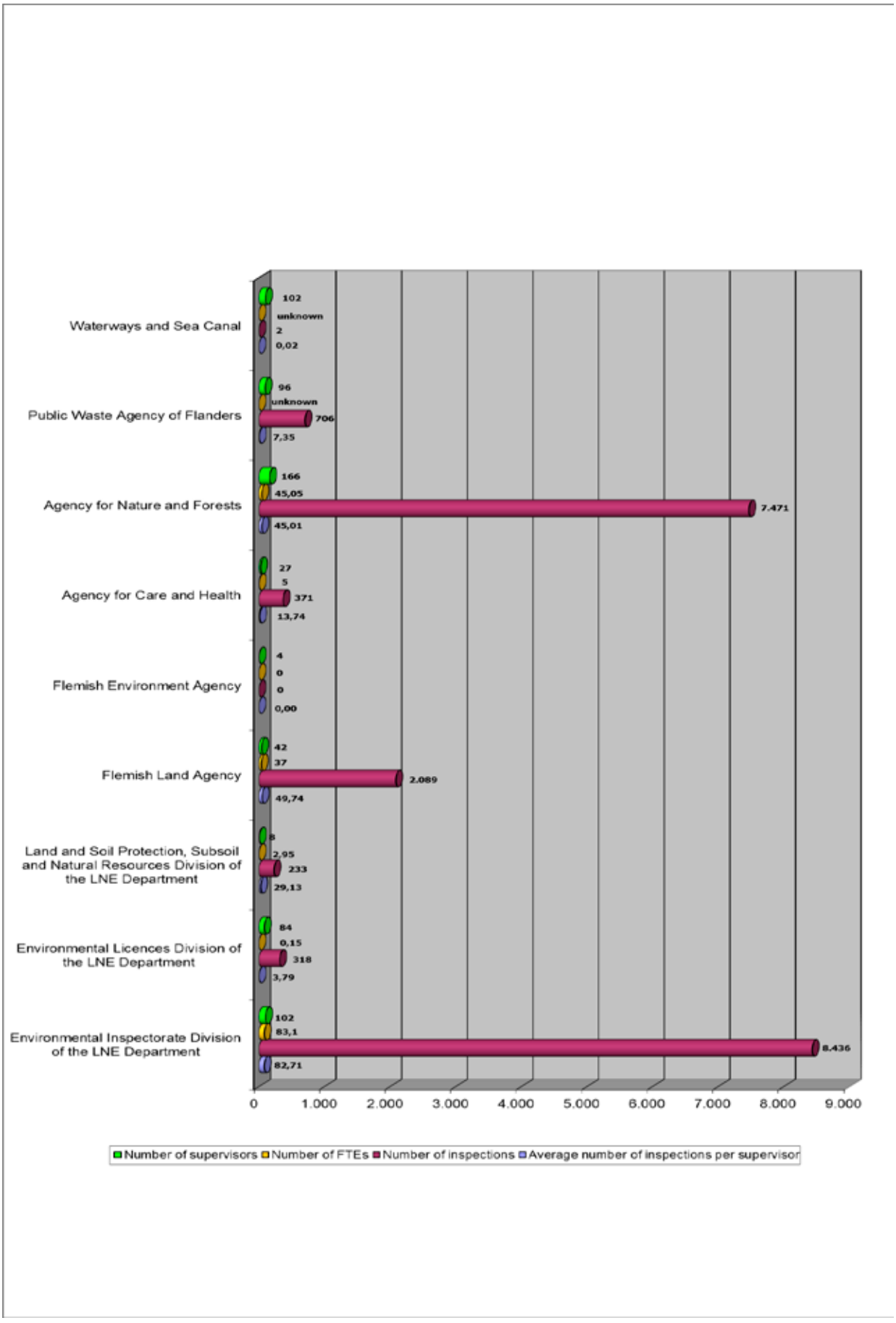
In order to determine the cause of this incoherent relationship, further study is necessary within the VHRM. One of the reasons could be that various actors have applied the appointment of supervisors in a pragmatic way, having all personnel 'considered suitable' within the organisation effectively appointed supervisors, even though these personnel will not actually be involved in supervisory activities. In addition, the figures above suggest that these supervisory duties are also often forced upon supervisors as additional duties within their existing duties, without giving them the necessary time or resources to carry them out (including, for instance, training possibilities). On the other hand, it may have been a conscious choice of the environmental enforcement actor to opt for appointing many of its personnel as supervisors in the framework of the specific competences. It could be studied to which extent the supervisory duties can be combined with other duties, given that the amount of time dedicated to enforcement duties seems to be very small for some enforcement actors.

In order to be better able to interpret the efforts of the regional supervisory bodies in the area of environmental enforcement in their context, these actors were asked how many inspections they had carried out between 1 May 2009 and 31 December 2009.

In the graph and table below not only the number of supervisors, the number of FTEs and the number of inspections were included. The number of inspections was also divided by the number of supervisors in order to obtain the average number of inspections per supervisor.

[21] For instance, for the Environmental Licences Division, with 84 appointed supervisors and only 0.15 FTEs dedicated to enforcement activities in the 2009 study period, and the Flemish Environment Agency, with 4 appointed supervisors and no FTEs dedicated to enforcement activities in the 2009 study period

[22] For instance, for the Environmental Inspectorate Division, with 102 appointed supervisors and 83.1 FTEs dedicated to enforcement activities in the 2009 study period, the Flemish Land Agency, with 42 appointed supervisors and 37 FTEs dedicated to enforcement activities in 2009, and the Agency for Nature and Forests, with 166 supervisors and 53 FTEs dedicated to enforcement activities.



Graph 3) *Efforts related to environmental enforcement duties*

	Average number of inspections per supervisor	Number of inspections	Number of FTEs	Number of supervisors
Environmental Inspectorate Division of the LNE Department	82,71	8.436	83,1	102
Environmental Licences Division of the LNE Department	3,79	318[23]	0,15	84
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	29,13	233	2,95	8
Flemish Land Agency	49,74	2.089	37	42
Flemish Environment Agency	0,00	0	0	4
Agency for Care and Health	13,74	371	5	27
Agency for Nature and Forests	45,01	7.471	45,05	166
Public Waste Agency of Flanders	7,35	706	unk.	96
Waterways and Sea Canal	0,02	2	unk.	102

Table 1) Efforts related to environmental enforcement duties

In order to interpret the graph and table above, the following notes must be made.

The Agency for Roads and Traffic has not yet appointed any supervisors, nor carried out any inspections. For this reason, the Agency for Roads and Traffic has not been included in this graph.

The Secretary-General of the Department of Environment, Nature and Energy also informed that no inspections had been carried out. The Secretary-General of the Department of Environment, Nature and Energy has been appointed supervisor, but has not yet been assigned any supervisory duties under the Environmental Enforcement Act. For these reasons, this actor is not included in the further evaluations contained in this environmental enforcement report.

The Agency for Nature and Forests is not able to say exactly how many inspections were carried out between 25 June 2009 and 31 December 2009. The figure above refers to the number of reported breaches of nature protection law, the number of inspected hunting permits and the number of inspected fishing permits. In addition, the Agency for Nature and Forests also identified breaches of the legislation in the rural zone on its own initiative in the framework of its monitoring and investigation duties. As it was impossible for the Agency for Nature and Forests to express the latter activities in number of inspections, these were not included in the total number of inspections carried out.

The Environmental Inspectorate Division clarified that it concerned 8,436 inspections, 8,165 of which were inspections on site and 271 of which were administrative inspections of self-monitoring.

Besides the total number of enforcement inspections carried out, the average number of inspections per supervisor is another possible perspective from which to look at the efforts of the regional enforcement actors. Here as well, a certain asymmetry can be observed for some actors. It could be studied whether, and to which extent, this asymmetry represents a problem.

[23] Among these were 306 inspections of burner engineers, for which AMV called in the assistance of an accredited inspection body. The supervisors appointed by AMV played an important role in the preparation and further follow-up of the results of these inspections.

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 its activities in the area of environmental enforcement. Among other things, it was asked how many people within the federal police had been actively involved in environmental enforcement in the Flemish Region during the 2009 study period. This was an enquiry into the number of federal police staff who were part of the Environmental Network.

It was also asked how many official reports had been made by the federal police in the Flemish Region as a result of an identification (based on reported offences, complaints or offenders who were caught in the act) between 1 May 2009 and 31 December 2009.

Another question referred to the number of proactive inspections carried out by the federal police in the Flemish Region between 1 May 2009 and 31 December 2009 in the framework of waste shipments and the result of these inspections (no breach was identified, administrative action was taken, or an official report was drawn up).

It was informed that within the federal police 121 people were active in environmental enforcement in the Flemish Region and were part of the Environmental Network. This Environmental Network is a network of people who, together, form a specific consultation platform, and which is made up of 659 members (556 of whom with a position as duty holder[24] and 103 with an interest in the environment) from the federal judicial police, district information banks, local police districts, traffic police, naval police and rail police. The idea is to exchange information related to environmental breaches, offer mutual support, develop Best Practices together, and conduct large-scale investigations in an effective and efficient way.

However, the figure of 121 federal police staff who are actively involved in environmental enforcement is both an underestimation and an overestimation. This is because this figure is an extraction from the Environmental Network database. Not all people included in this database are still actively involved in environmental enforcement. Conversely, it is also true that not all staff within the federal police who are involved in environmental enforcement are included in this network. It can therefore not be determined exactly how many people, or how many FTEs, are active within the federal police in the area of environmental enforcement. The figure of 121 people should therefore be regarded as indicative only.

During the period between 1 May 2009 and 31 December 2009 a total of 320 initial official reports[25] were included 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. 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 events.

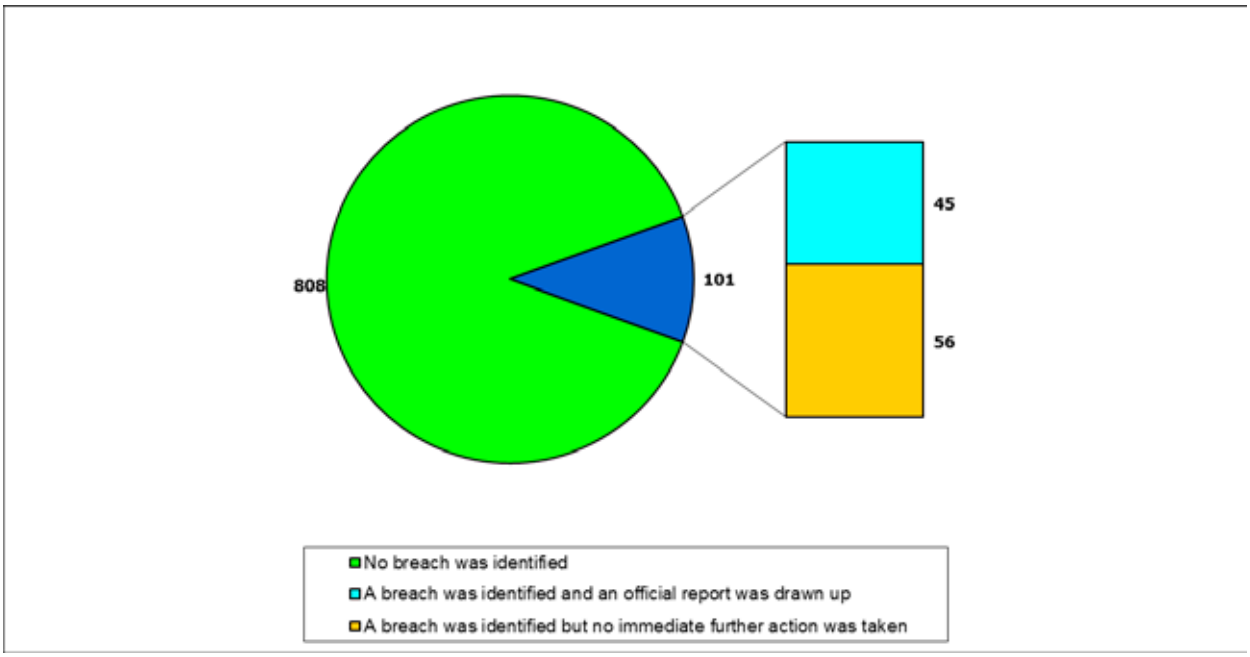
In addition to these reactive inspections, the federal police also carried out 909 proactive inspections between 1 May 2009 and 31 December 2009 in the framework of waste shipments on the territory of the

[24] A duty holder is a contact person within the field unit of the local police for the Environmental Network of the federal judicial police. This duty holder is not necessarily the person who carries out the identifications in the field.

[25] This figure (taken from the General National Database), compared to the figure for the number official reports drawn up in the framework of the proactive inspections of waste shipments, should be treated with caution. It can be estimated that approximately 15% of all ECO forms (see below) contain breaches. These are included in the General National Database. If the official report was drawn up at the moment the ECO form was being completed, these numbers were filtered out of the number of official reports given for reactive inspections. However, it is possible that more official reports were drawn up afterwards, if breaches were identified after the information had been checked by the administrations. These are also included in the General National Database, but can no longer be filtered.

Flemish Region. Within the federal police it was decided to focus on waste which represented a serious threat to public health or the environment, and which generated huge (illegal) profits.

In 101 of these inspections breaches were identified. The further result of these inspections is shown in the graph below.



Graph 4) Proactive inspections related to waste shipments carried out by the federal police

Between 1 May 2009 and 31 December 2009 a total of 909 inspections of waste shipments were carried out. In 89% of the inspections no breach was identified, and in 5% of cases an official report was drawn up. In 6% of the inspections a breach was identified but no immediate further action was taken. This can be explained by mentioning that for every inspection of a waste shipment an ECO form for waste is drawn up. 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 to identify infringements which result in initial official reports. However, no figures could be provided on this number. In conclusion, it can be said that in 56 inspections further investigation was required to determine whether the shipment complied with the legal provisions.

In other words, the enforcement activities of the federal police – 909 inspections in the study period – clearly concentrated on inspections of waste shipments. This was also specified 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.

2.3 EVALUATION OF THE ENVIRONMENTAL ENFORCEMENT POLICY PURSUED BY 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 among the local police force to perform municipal environmental enforcement activities. Furthermore, there are specialised environmental units within various police districts, or one or more members of staff specialise in environment-related matters. These staff are not always required to have supervisor status; they can also work in the capacity of judicial police officers.

The foregoing clearly indicates that a double approach had to be used to collect information about the local police as well. On the one hand, data were obtained via the federal police on the number of environmental enforcement actors of the local police within the Environmental Network, the number of environmental enforcement identifications (number of official reports drawn up in relation to environmental offences) and the number of proactive inspections carried out. To obtain these figures, the federal police consulted the Environmental Network Database, the General National Database and the Eco-messages Database.

With respect to the efforts of the supervisors appointed by the police districts no separate data could be retrieved from the abovementioned databases. As the difference between the efforts of the appointed supervisors and the other enforcement actors within the local police was considered relevant, it was decided to also set up a survey among supervisors appointed within the local police.

In this survey of police districts, similar to that conducted among the municipal supervisors (see Chapter 2.4.3), questions were asked about the number of inhabitants in the police district, whether the police district has an appointed supervisor at its disposal, the number of, time dedicated by and reporting of supervisors and the organisation of the supervisory activities within the local police force, and obviously the number of inspections and identifications carried out, as well as the results linked to these.

As a result of the need to choose this way of working, a lot of caution must be exercised when drawing conclusions from these figures. It is inevitable that these figures will contain over- or underestimations of environmental enforcement activities by the local police. In the evaluation of the enforcement instruments in Chapter 3, this is solved by including in the graph, on the one hand, the actor 'Total local police'. This actor represents the figures obtained from the federal police database, and hence comprises the entire local police force. On the other hand, 'Supervisors appointed by the local police' are mentioned as another actor; these figures refer to the survey among police districts. In the evaluation below of enforcement efforts by the local police, unless explicitly stated otherwise, the latter figures are used.

The figures referring to the supervisors appointed by the local police are an underestimation, because the response obtained was not complete. On the other hand, it is inevitable that figures referring to inspections carried out by municipal supervisors were included in the figures on police inspections, and vice versa. In this sense, a possible overestimation should be taken into account when looking at the figures given.

RESPONSE FROM THE LOCAL POLICE CONCERNING THE REQUEST FOR INFORMATION

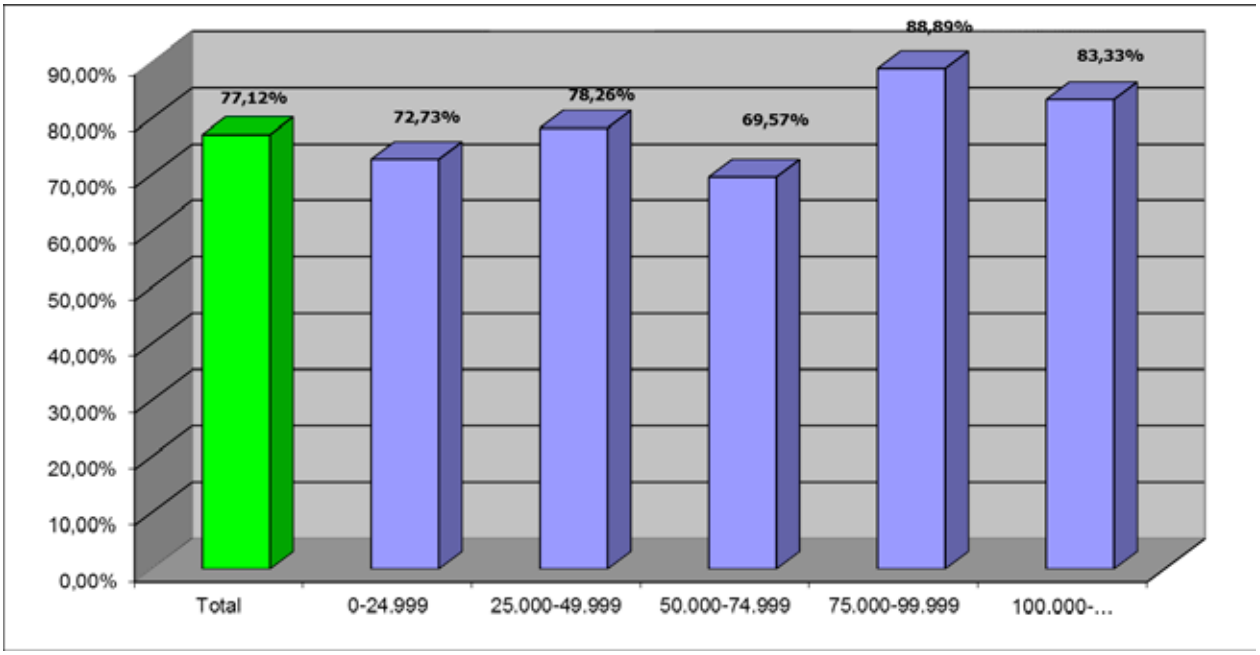
The VHRM received input from 91 police districts, which means a response of 77.12% for the Flemish Region. The graph and table below provide an overview of the response based on the number of inhabitants in the police district.

As for 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 with a classification of police districts per province. 5 categories of police districts are used:

	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	54
police districts with 50.000-74.999 inhabitants	23	16
police districts with 75.000-99,999 inhabitants	9	8
police districts with more than 100.000 inhabitants	6	5

Table 2) *Categories of Flemish police districts, number of police districts per category and number of respondents per category*

The response from the Flemish police districts, in percentages, can be graphically represented as follows:



Graph 5) *Response (%) from the local police concerning the request for information (according to police district population)*

Based on the figures above, it can be concluded that a relevant number of police districts responded for all categories. Taking into account the notes made above, it can 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.

EFFORTS RELATED TO ENVIRONMENTAL ENFORCEMENT DUTIES

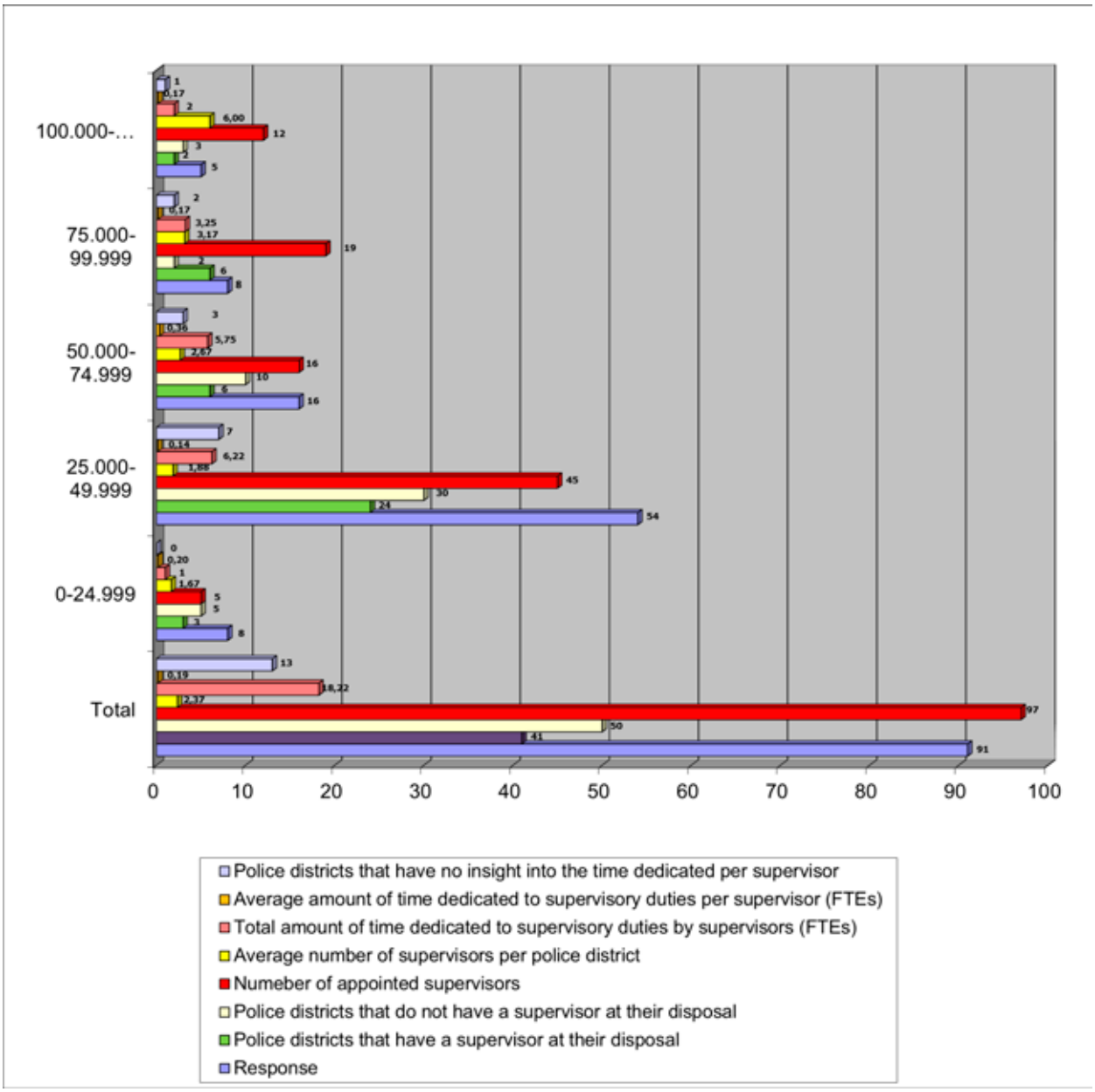
Appointment of supervisors by the local police and time dedicated

With reference to Article 16§1 of the Act of 12 December 2008 implementing Title XVI of the decree of 5 April 1995 containing general provisions on environmental policy (Environmental Enforcement Act), it was already mentioned in Chapter 2.3.3 that municipalities are required to have at least 1 supervisor at their disposal within one year after the coming into effect of the aforementioned act, 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.[26]

Below is an interim evaluation of the appointment of supervisors by the local police, made by including data in the graph and table referring to the number of police districts that have or do not have a supervisor at their disposal, the number of appointed supervisors, and the time dedicated by these supervisors. When looking at and interpreting this information, it must be born in mind that this is only an interim evaluation, given that the end dates to comply with the provisions of Article 16§1 have not yet been reached.

[26] The local police also collaborate with the Environmental Network mentioned under 2.2. This Environmental Network is a network of people who, together, form a specific consultation platform, and which is made up of 659 members (556 of whom with a position and 103 with an interest in the environment) from the federal judicial police, District Information Banks, local police districts, the traffic police, the naval police and the rail police. The idea is to exchange information related to breaches of environmental law, offer mutual support, develop Best Practices together, and conduct large-scale investigations in an effective and efficient way.



Graph 6) 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	54	16	8	5	91
Police districts that have a supervisor at their disposal	3	24	6	6	2	41
Police districts that do not have a supervisor at their disposal	5	30	10	2	3	50
Number of appointed supervisors	5	45	16	19	12	97
Average number of supervisors per police district	1,67	1,88	2,67	3,17	6,00	2,37
Total amount of time dedicated to supervisory duties by supervisors (FTEs)	1,00	6,22	5,75	3,25	2,00	18,22
Average amount of time dedicated to supervisory duties per supervisor (FTEs)	0,20	0,14	0,36	0,17	0,17	0,19
Police districts that have no insight into the time dedicated per supervisor	0	7	3	2	1	13

Table 3) *Overview of efforts related to environmental enforcement duties by local police supervisors (according to police district population)*

Of the 91 responding police districts a little over half – 54.94% – apparently have no supervisor at their disposal. In the remaining 41 police districts (45.06%), however, an appointed supervisor was available. Due to a lack of data in this respect, these figures cannot be interpreted in relation to the number of municipalities which would choose to use a supervisor appointed by the local police to carry out the municipal supervisory duties.

When it comes to the appointment of a supervisor by a police district, the police districts can be subdivided into two large groups. With a 75% share, the highest number of supervisors can be found in police districts with 75,000-99,999 inhabitants. Another group is formed by the other police districts, where the share of police districts with a supervisor ranges between 37.5% and 44.4%.

At the end of 2009, 97 supervisors were active in the 41 police districts with an appointed supervisor, which means an average of 2.37 supervisors per police district.[27] However, where this figure is concerned, there is a clear rising trend depending on the size of the police district. Whereas smaller

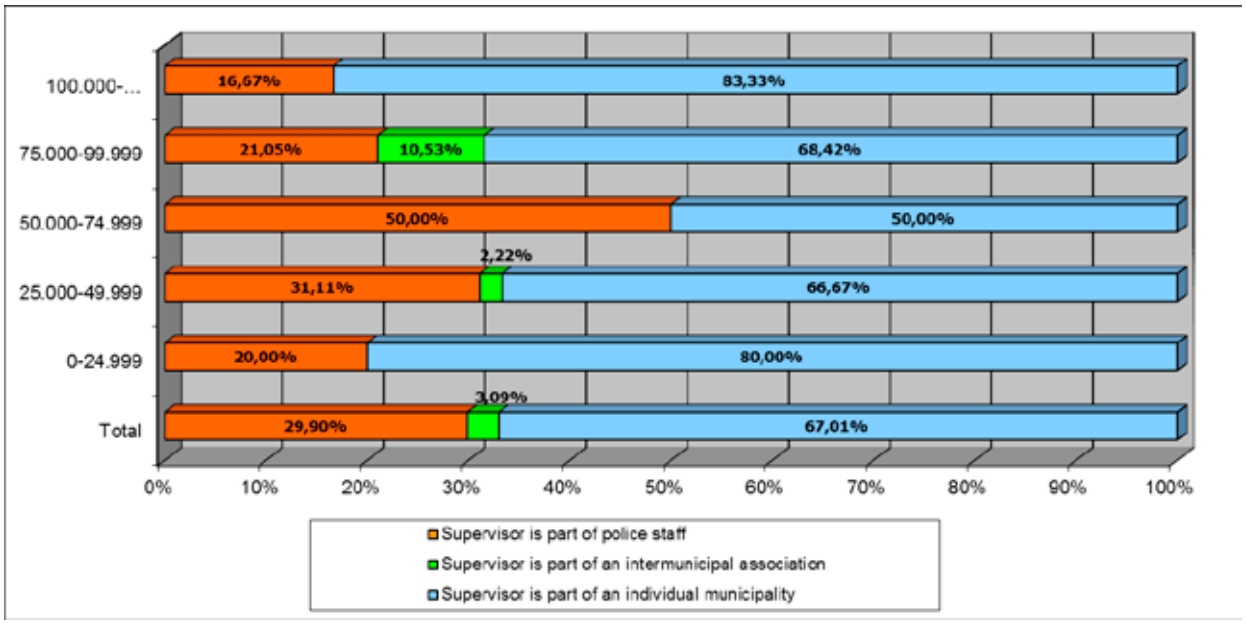
[27] There may be certain distortion of the data here, so caution must be exercised. During the data collection there may have been certain confusion resulting from the terms 'supervisor', 'duty holder', 'member of the Environmental Network' or other terms used within the force to refer to people who have been assigned environmental enforcement duties.

police districts with 0-24,999 inhabitants appointed an average of 1.67 supervisors, in large police districts with more than 100,000 inhabitants an average of 6.00 supervisors are active. What is remarkable is the big difference between police districts with a population of 75,000-99,999 and large police districts with more than 100,000 inhabitants. The average number of supervisors in the latter category is nearly double that of the immediately preceding category.

As was the case for the municipalities, supervisors appointed by the local police spent very little time, on average, on performing actual supervisory activities. For the average Flemish police district, this share, based on the figures obtained through the questionnaire, is 0.19 FTEs. For police districts with 0-24,999 inhabitants, 75,000-99,999 and more than 100,000 inhabitants, the average amount of time dedicated is close to this Flemish average, namely 0.20 FTEs, 0.19 FTEs and 0.19 FTEs, respectively. In police districts with a population between 25,000 and 50,000 the average supervisor has less time for environmental enforcement activities (0.14 FTEs). The supervisors of the police districts with 50,000-74,999 inhabitants have most time – 0.36 FTEs – to spend on the supervisory duties assigned to them. However, the differences are not very significant.

Organisation of supervisory duties within the local police

Similarly to the method used for the municipalities, the local police force was questioned on whether the supervisor was a member of the police force itself, of the intermunicipal association or of an individual municipality. However, mention must be made of a certain distortion between graphs 7) and 16). Taking into account that the VHRM did not receive a complete response, neither from the municipalities nor from the police districts, and cases of double counting are possible as well, the figures must be put into perspective, and comparison between both figures as such is not possible.



Graph 7) Organisation of supervisory duties within the local police (according to police district population)

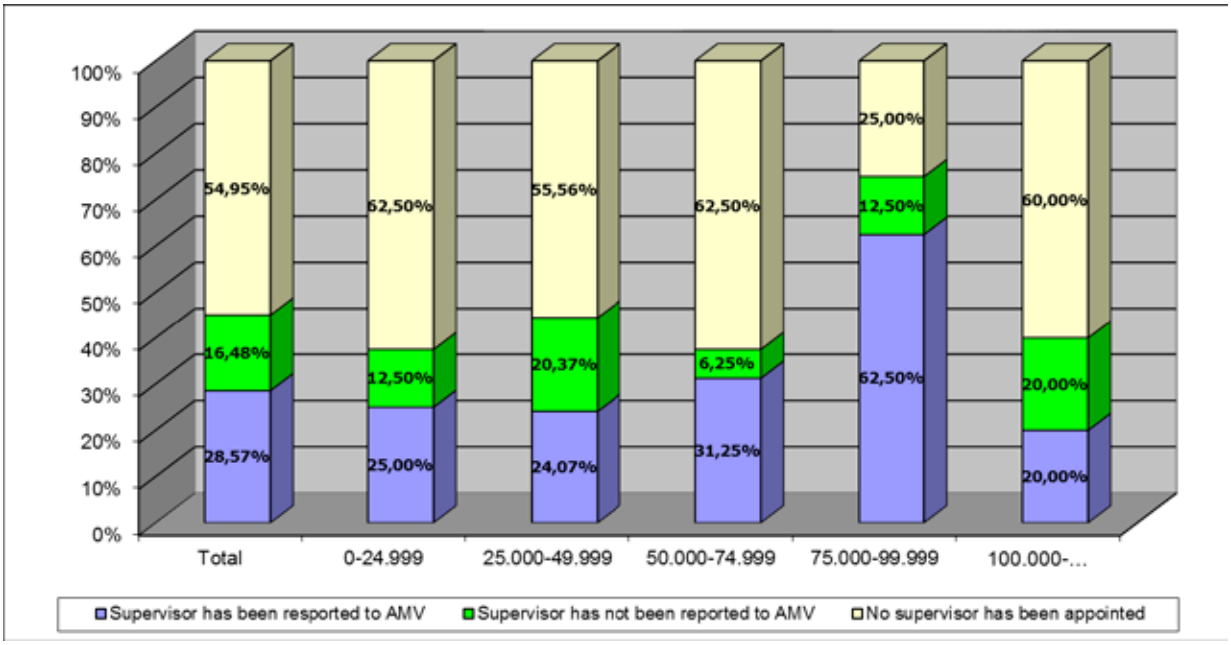
67.01% of Flemish police districts used the supervisor appointed by a municipality belonging to the police district to support its enforcement activities. Another 3.09% of the police districts used a supervisor of an intermunicipal association, and the remaining 29.90% appointed their own supervisor.

Nevertheless, the federal police reported that 220 people within the local police were active in environmental enforcement in the Flemish Region. According to the currently available data from the questionnaire, only 29, or 13.18%, of these people would have the status of supervisor. Taking this into account, the local police face the important challenge of developing clear guidelines to correctly inform and train people active in environmental enforcement when it comes to their rights and duties, enforcement instruments at their disposal, etc.

What is remarkable in this graph is that especially the smallest (0-24,999 inhabitants) and the largest (>100,000 inhabitants) police districts are the ones that use a municipal supervisor most frequently, in 80.00% and 83.33% of cases, respectively. By contrast, in the intermediate category, that with 50,000-74,999 inhabitants, exactly half of all police districts use their own supervisors, and the same number use a municipal supervisor. In the remaining two categories – those with 25,000-49,999 and 75,000-99,999 inhabitants, respectively – police districts can be found which, in addition to a supervisor of the police district itself and a supervisor of a municipality that belongs to the police district, called on supervisors from an intermunicipal association.

Reporting of supervisors within the police district to AMV

For the 41 police districts that had an appointed supervisor at their disposal, the questionnaire also asked about whether this supervisor had been reported to the Environmental Licences Division (AMV) of the Department of Environment, Nature and Energy. The results are shown in the graph below.



Graph 8) *Appointment and reporting of local police supervisors to AMV (according to police district population)*

63.41% or 26 of those 41 police districts reportedly had a supervisor at their disposal who had been reported to AMV, whereas the supervisors in the remaining 15 police districts still needed to be reported.

In the different categories of police districts as well, most supervisors indicate that they have taken the necessary action to comply with the reporting requirement in question. In the large police districts – those with more than 100,000 inhabitants – 1 out of 2 supervisors say they have already complied with this administrative obligation. For the police districts with populations of 0-24,999, 25,000-49,999, 50,000-74,999 and 75.000-99.999, the number of police districts stating that the supervisors they have at their disposal have been reported to AMV is even higher, namely 66.67%, 54.17%, 83.33% and 83.33%, respectively.

With respect to the municipal supervisors – in light of the data provided by the Environmental Licences Division of the Department of Environment, Nature and Energy – there is doubt as to the number of supervisors that have effectively been reported to AMV (see 2.4.3). However, a similar check cannot be carried out for the reporting of supervisors at the disposal of the police districts, as the data provided relate to the individual municipalities. In any case, the figures above also seem to be very high compared to those of AMV. In this context, it might be appropriate to not only address the burgomasters, but also the superintendents of the police districts in question on the matter of timely and correct reporting of supervisors to be appointed.

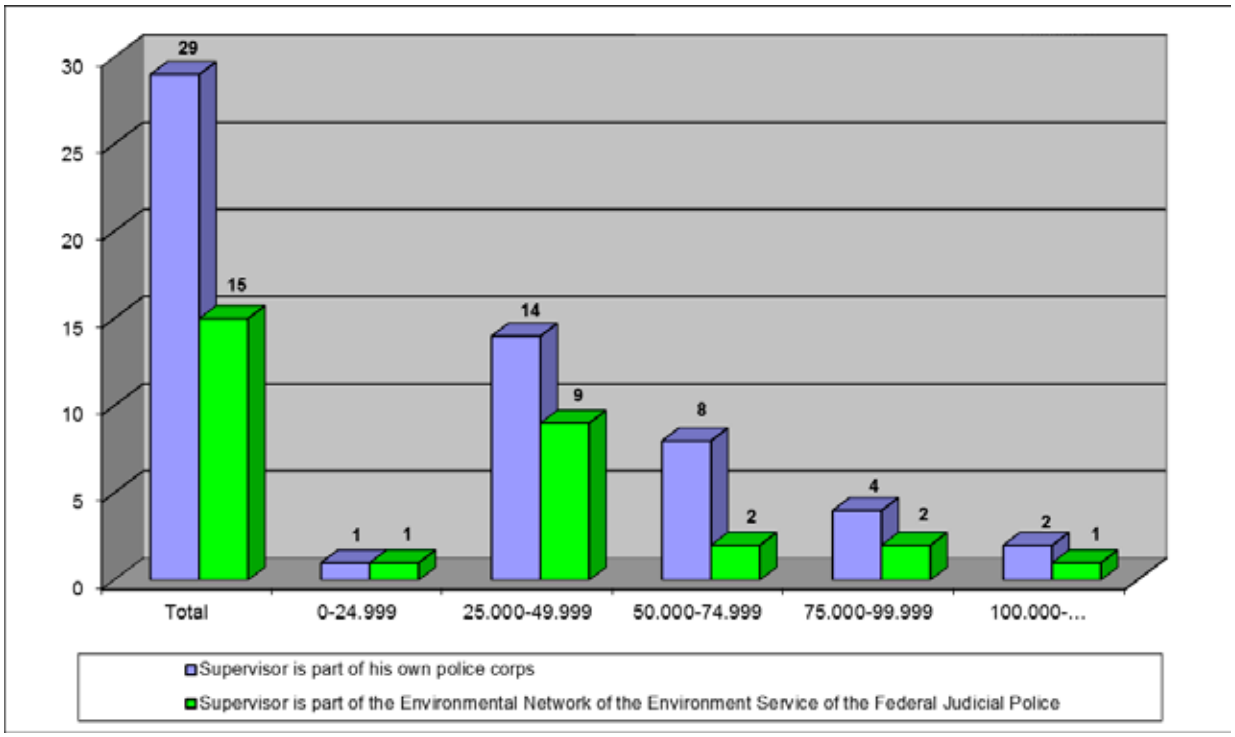
The Environmental Network of the Environment Service of the federal judicial police

The federal judicial police has set up an Environmental Network to exchange information related to environmental infringements, offer mutual support, develop Best Practices together, and conduct large-scale investigations in an effective and efficient way. The Environmental Network works based on meetings at different levels (central, district or local), with the possible participation of environment magistrates and administrations.

Where the police forces are concerned, the network has 659 members. 556 of these members occupy a position as duty holder[28], and 103 are people interested in this matter. The network consists of members of:

- The judicial federal police;
- The District Information Banks;
- The local police districts (183 of the 196 districts are represented);
- The traffic police;
- The naval police;
- The rail police.

Based on these data obtained by questioning the supervisors at the disposal of the local police, the participation of supervisors in this Environmental Network is shown in the graph below.



Graph 9) Environmental Network of the Environment Service of the federal judicial police

Just over half – 51.72% – of all supervisors appointed by the local police are part of the Environmental Network of the Environment Service of the federal judicial police. Especially in smaller police districts supervisors are sent to the Environmental Network to represent the police district. In police districts with

[28] A duty holder is a contact person within the field unit of the local police for the Environmental Network of the federal judicial police. This duty holder is not necessarily the person who carries out the identifications in the field.

0-24,999 inhabitants, the share is as high as 100%, whereas for police districts with 25,000-49,999 inhabitants a share of 64.29% was recorded.

In larger police districts the share of supervisors who are part of the Environmental Network is considerably smaller. For police districts with 50,000-74,999, 75,000-99,999 and more than 100,000 inhabitants the percentage of supervisors in the Environmental Network amounts to 25%, 50% and 50%.

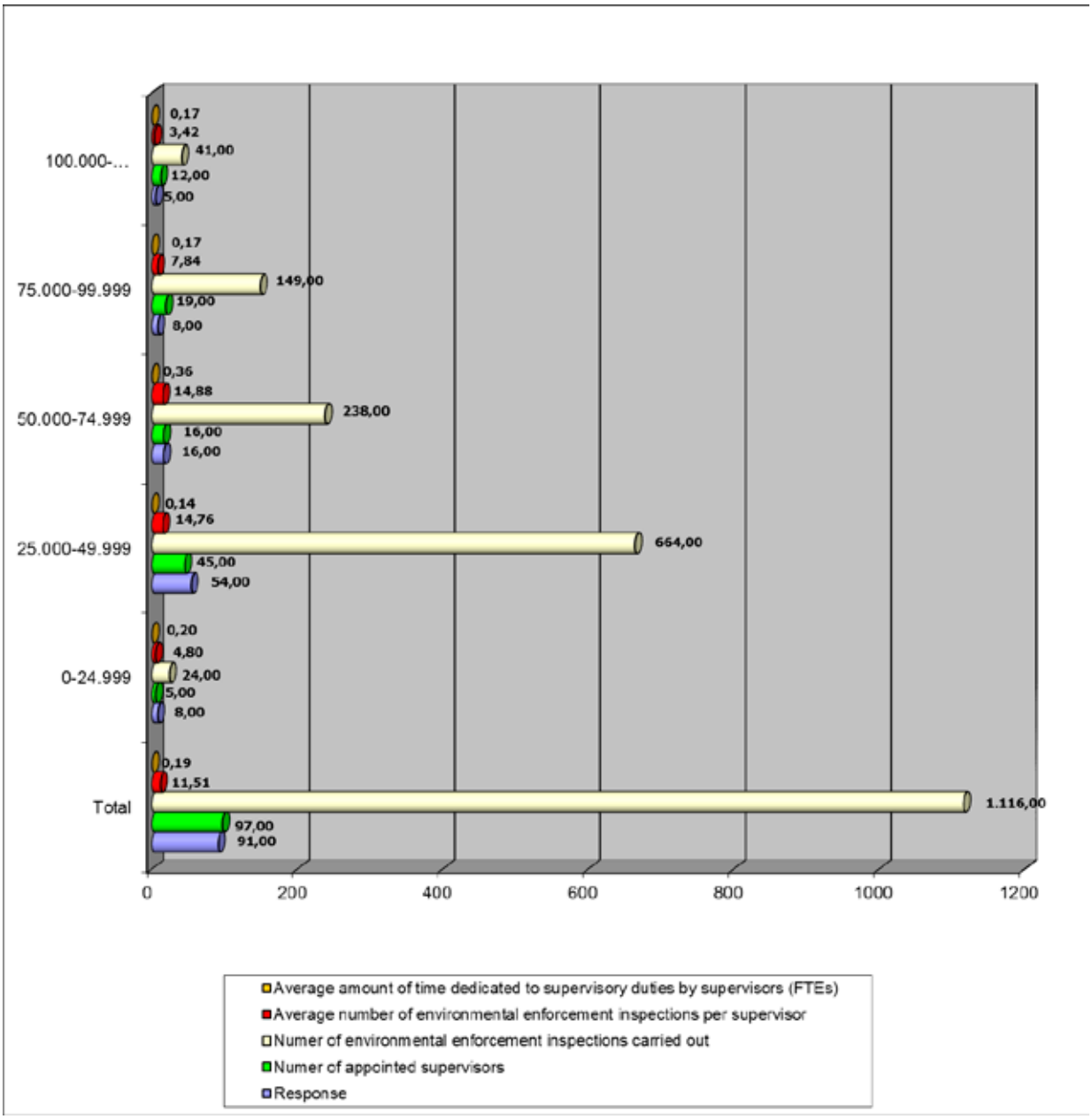
Activities related to environmental enforcement by the local police

Today, the police forces make extensive use of ASTRID dispatching solutions. The ASTRID system makes 11 provincial control rooms, also called Communication and Information Centres (CIC), available to the emergency and security services. There is one in each province, and one in the Brussels Capital Region. The computerised control rooms make it possible to receive emergency calls, pass these on to the competent service and support the teams in the field with all kinds of information.

In the CIC database, information on all received calls is stored. In order to obtain an insight into the number of calls received by the local police with the environment as their main topic, this information was retrieved by questioning the local police supervisors. However, at the request of the Permanent Committee for the local police and the representative of the local police in the VHRM, these data have not been included in this Environmental Enforcement Report 2009, as it is very likely that the information received refers to the whole of 2009, and not to the study period. This shortcoming can be avoided in the Environmental Enforcement Report 2010, as participants will be asked to report on the entire calendar year.

Environmental enforcement inspections carried out by local police supervisors

Parallel to the method used for the municipal supervisors, in order to get an insight into the activities of the supervisors at the disposal of the local police the graph and table below show the total number of environmental enforcement inspections carried out per police district category, but also the average number of environmental enforcement inspections per supervisor. The results of these inspections will then be discussed in the evaluation of the individual enforcement instruments in Chapter 3.

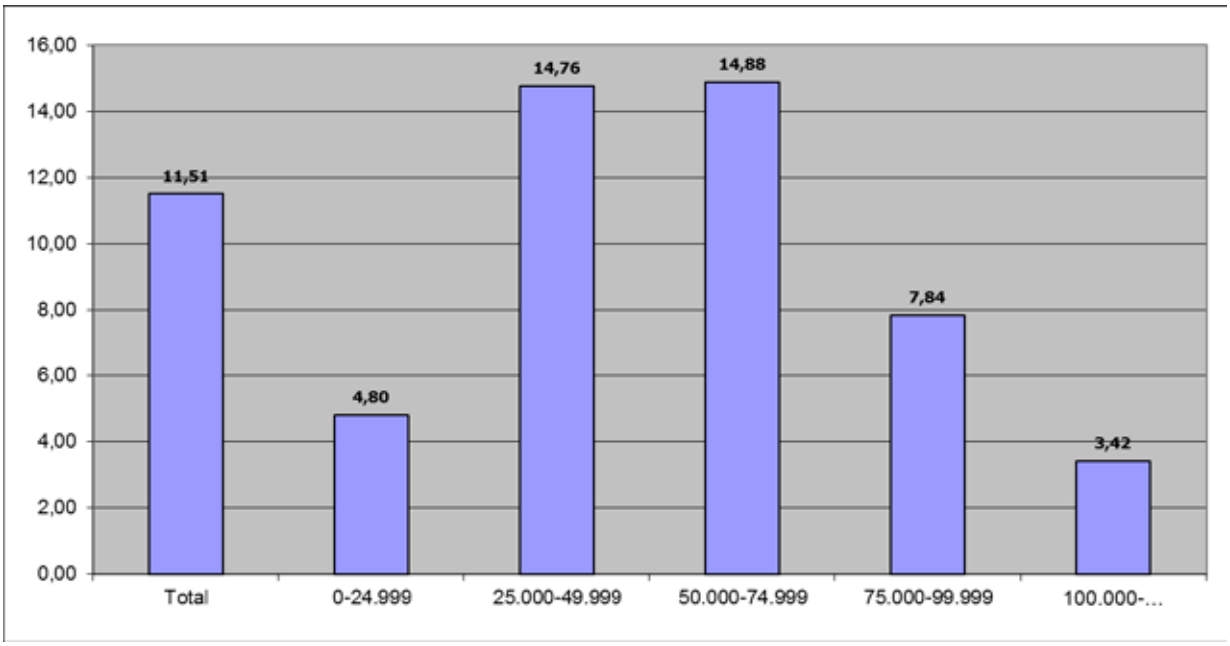


Graph 10) *Efforts related to environmental enforcement duties by local police supervisors (according to police district population)*

	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 (FTEs)
0-24.999	8,00	5,00	24	0,05	0,20
25.000-49.999	54,00	45,00	664	0,15	0,14
50.000-74.999	16,00	16,00	238	0,15	0,36
75.000-99.999	8,00	19,00	149	0,08	0,17
100.000-…	5,00	12,00	41	0,03	0,17
Total	91,00	97,00	1.116	0,12	0,19

Table 4) *Efforts related to environmental enforcement duties by local police supervisors (according to population)*

In the 91 responding police districts, the 97 supervisors available to these police districts carried out a total of 1,116 environmental enforcement inspections. Based on these figures, it can be said that each supervisor available to the police district carried out an average of 11.51 environmental enforcement inspections in the period from 1 May 2009 to 31 December 2009. Each supervisor could spend an average of 0.19 FTEs on these supervisory duties.



Graph 11) *Average number of environmental enforcement inspections by local police supervisors (according to police district population)*

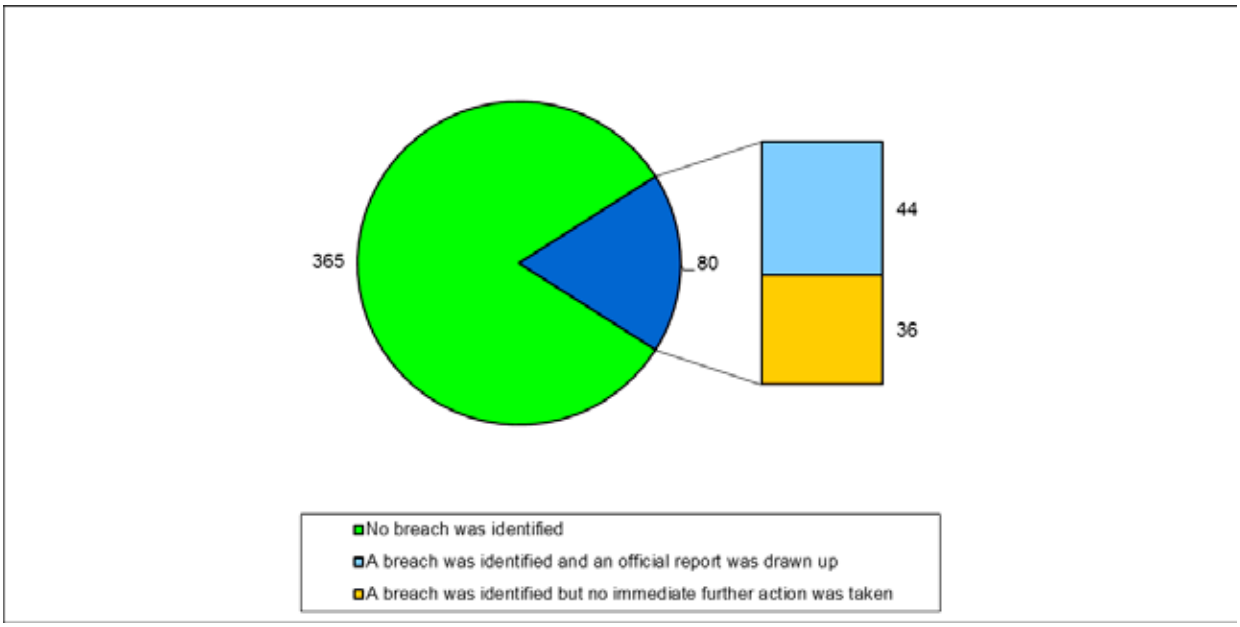
In the police districts with populations of 25,000-49,999 and 50,000-74,999 supervisors carried out more environmental enforcement inspections, on average, than the Flemish mean. The average number of inspections carried out in the period in question of 2009 was 14.76 and 14.88, respectively. There is a remarkable difference in the amount of time dedicated by the supervisors of these police districts. Supervisors active in police districts with 25,000-49,999 inhabitants had an average of 0.14 FTEs to spend on supervisory duties, whereas this was 0.36 FTEs in police districts with 50,000-74,999 inhabitants – almost double the Flemish average.

Police districts with less than 25,000 and those with more than 75,000 inhabitants carried out significantly less environmental enforcement inspections than the average Flemish supervisor available to

police districts. Despite the lower number of inspections carried out, these supervisors had about the same amount of time in FTEs to spend on supervisory duties as the Flemish mean.

Proactive inspections related to waste shipments carried out by the local police

For the number of inspections carried out by the local police the VHRM also received information from the federal police in addition to the figures obtained through the questionnaire. Concretely, the federal police provided data on the number of proactive inspections related to waste shipments carried out by the local police.



Graph 12) Proactive inspections related to waste shipments carried out by the local police

The figures above are based on the official reports drawn up at the moment the ECO form was completed. However, it is possible that more official reports were drawn up afterwards, if breaches were identified after the information was checked by the administrations. However, the federal police was unable to provide insight into these figures.

Given that in the number of proactive inspections related to waste shipments no distinction is made according to the actor that carried out the inspection, the figures cannot be related to the enforcement efforts of the supervisors available to the local police.

2.4 EVALUATION OF THE LOCAL ENVIRONMENTAL ENFORCEMENT POLICY

2.4.1 Provincial governors

The competences of the provincial governors of the 5 Flemish provinces were very clearly defined in the Environmental Enforcement Decree. Concretely, they are competent to impose administrative measures and/or safety measures in the framework of:

- the law of 26 March 1971 on the protection of surface waters against pollution;
- the decree of 2 July 1981 on the prevention and management of waste;

- Articles 4 (operation without a licence) and 22 (operation Category 2 and 3 without complying with the licensing requirements) of the decree of 28 June 1985 on the environmental licence.

In the table below an overview is given of the questions/requests[29] received by the governors in relation to the imposition of administrative measures and/or safety measures as well as the number of administrative measures and/or safety measures that were effectively imposed following these questions/requests.

		Provincial governor				
		Limburg	*Flemish Brabant*	*Antwerp*	*East Flanders*	*West Flanders*
Administrative measures	Number of questions/requests received since 1 May 2009 in relation to the imposition of administrative measures	0	0	1	2	0
	Number of administrative measures imposed since 1 May 2009	0	0	0	0	0
Safety measures	Number of questions/requests received since 1 May 2009 in relation to the imposition of safety measures	0	0	0	0	0
	Number of safety measures imposed since 1 May 2009	0	0	0	0	0

Table 5) *Requests for the imposition of administrative measures and safety measures and number of administrative measures and safety measures imposed by the governors of the Flemish provinces since 1 May 2009*

2.4.1.1 Administrative measures

Since 1 May 2009, the provincial governors of the provinces of Antwerp and East Flanders received 1 and 2 questions/requests, respectively, in relation to the imposition of administrative measures. However, no administrative measures were imposed.

Although it is not possible, based on the current data, to determine the reason for the fact that no administrative measures were imposed, various scenarios are possible. For instance, one cause could be the fact that the questions/requests were wrongly addressed to the governors, or fell outside the governors' competence.

Another cause could be the lack of a solid team, support or experience of governors to effectively implement the new competences under the Environmental Enforcement Decree. However, this has already been remedied following a letter from the governor of West Flanders to the Flemish Minister for the Environment, Nature and Culture. In each province the governors can call on the Environmental Inspectorate Division for assistance in these matters.

It should also be mentioned that none of the provincial governors themselves took the initiative to impose administrative measures.

[29] These can be requests from supervisors or requests for measures made by third parties, as referred to in Article 16.4.18 of DABM.

2.4.1.2 Safety measures

None of the 5 provincial governors received a question/request in relation to the imposition of safety measures. In this context as well, governors can turn to the Environmental Inspectorate Division for expert assistance if necessary.

It should also be mentioned that none of the provincial governors themselves took the initiative to take safety measures.

2.4.2 Provincial supervisors

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

With a view to this provision, the VHRM therefore considered it appropriate to question the provincial councils of the five Flemish provinces, through the council member responsible for 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 law of 26 March 1971 on the protection of surface waters against pollution, Category 2 and 3 unnavigable watercourses and related installations;
- Article 12 of the decree of 2 July 1981 on the prevention and management of waste, Category 2 and 3 unnavigable watercourses and related installations.

The VHRM did not receive completed questionnaires from the provincial councils of Flemish Brabant or West Flanders, but these provinces did explain their way of working orally during the consultations of the Association of Flemish Provinces (VVP).

2.4.2.1 Appointed provincial supervisors

Province	Did the province have a supervisor (appointed by the provincial council or a Vlarem official) at its disposal from 1 May onwards?
Limburg	No
Antwerp	No
Flemish Brabant	No
East Flanders	No
West Flanders	No

Table 6) Appointed provincial supervisors

The overview above provides a clear picture of the fact that the provincial councils had not appointed any provincial supervisors yet in the 2009 study period, and that the provinces did not have an official with a Vlarem certificate at their disposal either.

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.

This lack of clarity could explain the fact that no provincial supervisors were appointed during the 2009 study period.

2.4.2.2 Efforts related to environmental enforcement duties

The five provinces communicated, either in writing or orally, that no environmental enforcement inspections were carried out between 1 May 2009 and 31 December 2009.

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 Inspection Division (AMI) was also assigned supervisory duties under this legislation, but does not consider infringements in the open countryside[30] 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 DABM, but for which 6 to 8 people per province have been appointed to carry out monitoring activities:

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

As this legislation was not included in the Environmental Enforcement Decree, this monitoring activity and any related inspections or inspectors have not been included in this environmental enforcement report.

Training is a key element when it comes to building knowledge and expertise. The provinces are currently signalling that the training for supervisors as provided for in DABM – taking into account the limited supervisory duties of the provincial supervisors – is too extensive. In order to remedy this, it should be studied whether an adapted or slimmed-down version of this training could be introduced.

2.4.2.3 Efforts in the framework of the supporting role of the provinces for municipalities

The activities of the provinces in the area of environmental enforcement cannot only be discussed in the framework of the Environmental Enforcement Decree; 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 Flemish authorities 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 municipal environmental policy. The provinces take an active supporting role with respect to individual municipalities, and guide municipalities depending on their needs. The provinces are under the obligation to draw up annual reports on the implementation of the provincial cooperation agreement. In these reports, 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. Environmental enforcement does not currently constitute a separate chapter, and based on the reports of the Flemish provinces for 2009 it can only be attempted to give an idea of the activities and initiatives

[30] Based on the consultations within the LNE working group on Environmental Enforcement the term 'infringements in the open countryside' can be defined as 'breaches of environmental health regulations, waste regulations or regulations for the protection of surface water which are not linked to a nuisance-causing plant, but can take place in the open countryside (e.g. dumping of waste). This excludes breaches of nature protection law.

provinces have undertaken to support the municipalities in the area of environmental enforcement within the different topics.

Provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and supervisors of police districts are required to have a certificate of competence, which can be obtained by taking specific training, as stipulated in the Environmental Enforcement Act. This training is the former 'Vlarem training' and may only be provided by institutions that have been certified to do so by the Flemish Minister in charge of Environment, after advice from the Environmental Licences Division of the Department of Environment, Nature and Energy, stating reasons.

In 2009 the following provincial institutions were certified to provide training to municipal environmental officials as stipulated in Article 60 of Title I of Vlarem:

- Provincial Centre for Environmental Investigation (East Flanders), by act of the Flemish Minister for Public Works, Energy, the Environment and Nature of 18 April 2008. This in cooperation with the West Flanders Police Academy (West Flanders), by order of the Flemish Minister for Public Works, Energy, the Environment and Nature of 27 August 2008;
- Province of Limburg Education and Training (Limburg), by act of the Flemish Minister for Public Works, Energy, the Environment and Nature of 15 October 2008:
- Education and Training Institute for Government Officials (Antwerp), by act of the Flemish Minister for Public Works, Energy, the Environment and Nature of 3 December 2008;
- Provincial Institute for Education and Training (Flemish Brabant), by act of the Flemish Minister for Public Works, Energy, the Environment and Nature of 10 March 2009.

In 2009 Vlarem training was ongoing in the provinces of West and East Flanders, which therefore offered support in the training of local supervisors.

In Limburg, the following training was ongoing in 2009 as well: 'carrying out noise measurements' and 'measurement and assessment of noise and odour levels'. These were the noise and odour modules of the Vlarem training, which could be taken separately.

For the sake of completeness, we will also list the certified training institutions that are not linked to provincial training centres:

- Katholieke Hogeschool Kempen, Health Care and Chemistry Department (Antwerp), by act of the Flemish Minister for Public Works, Energy, the Environment and Nature of 2 April 2008.

This training is part of the Bachelor's Degree Programme in Chemistry - major 'Environmental Care'.

In addition to these courses for local supervisors the provinces also organised other training to provide support to municipalities, for instance training in the framework of the use of the 'System for the Registration and Follow-up of Complaints', the Environmental Enforcement Decree and the Vlarem update.

Furthermore, a number of provinces took specific action to support municipalities in the performance of their environmental enforcement activities.

During the development of a campaign around illegal dumping the province of East Flanders gave attention to enforcement in this context. The idea was to encourage municipal environmental officials and police districts to develop a specific enforcement campaign with respect to illegal dumping. The municipalities could make use of the campaign material made available by the province. The province of East Flanders also works with an 'environmental contract'. In exchange for a contribution, a team of provincial experts offers support in technical-scientific, legal, policy or educational matters, and samples, lab tests and noise measurements can be carried out by the Provincial Centre for Environmental Investigation.

The province of Antwerp works, in a similar way, with provincial experts, samples, lab tests and noise measurements carried out by the Provincial Institute for Hygiene. These services are offered to environmental officials, and extended to the local police.

The province of Antwerp conducted a survey among 70% of the Antwerp municipalities on bottlenecks in the framework of the topic 'instruments' of the cooperation agreement 2008-2013. With respect to environmental enforcement it was mentioned that carrying out proactive inspections requires a lot of time from environmental officials, on top of their other duties, that the Environmental Enforcement Decree still gives rise to a lot of questions, and that the cooperation with the police is crucial in this matter. As a result, the municipal environmental service is put in a position of dependence.

In Flemish Brabant the consultations between environmental officials included the following topics, among others:

- the Vlarem update act;
- the Environmental Enforcement Act;
- the supervising officials, their appointment and their duties.

In addition, on the initiative of the Asse federal police, an environmental enforcement platform was set up in the district of Halle-Vilvoorde. This forum is open to everyone who is active in environmental supervision. Together with the regional activities unit, the federal police sets the agenda for the meetings of this forum and the municipalities are invited to these consultations by the regional activities unit. Similar platforms already existed in other districts.

The provinces of West Flanders and Limburg also each hold structured consultations with the environmental officials, sometimes at specific meetings in consultation with the local police. West Flanders, among other things, discussed the tackling of illegal incineration and attention to nuisance linked to bird control in 2009. Issues tackled by Limburg included neighbour dispute mediation.

In the 2010 programme of the Flemish provinces, as included in the Environmental Enforcement Programme 2010 of the Flemish High Council of Environmental Enforcement, it was stated that in 2010 the Flemish provinces would work on the further, concrete elaboration and extension of the supporting activities related to the enforcement policy at the local level. However, it can be observed that the provinces have already taken certain initiatives in the framework of the cooperation agreement 2008-2013 to offer support to municipalities in the exercise of their enforcement duties.

2.4.3 Supervisory duties performed by Flemish cities and municipalities

As for the other enforcement actors, it is attempted, based on the supervisory duties of the Flemish cities and municipalities, to provide an insight into the efforts made by them in the area of local environmental enforcement.

Similarly to the Flemish provinces, the supervisory duty of the Flemish cities and municipalities is double. This is reflected in practice in the fact that the Environmental Enforcement Decree provides for enforcement duties for two municipal actors: the burgomaster and the municipal supervisor.

The competences of the burgomasters of the 308 Flemish cities and municipalities are very clearly defined in the Environmental Enforcement Decree. Concretely, they are competent to impose administrative measures and safety measures in the framework of:

- Law of 26 March 1971 on the protection of surface waters against pollution.
- Decree of 2 July 1981 on the prevention and management of waste.
- Article 4 of the decree of 28 June 1985 on the environmental licence: operation of a nuisance-causing plant without a licence.
- Article 22 of the decree of 28 June 1985 on the environmental licence: operation of a Category 2 or Category 3 establishment in contravention to the licensing requirements.
- Article 62 of the decree of 27 October 2006 on soil remediation and soil protection.
- Decree 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:

- Decree 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.
- Law 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.
- Law 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.
- Law 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 Act of 7 November 1982, Article 2.
- Royal Act of 24 February 1977 on electronically amplified music, Article 5.
- Articles 11, 12, 13, 14, 17, 18 and 20 of the decree of 2 July 1981 on the prevention and management of waste and the corresponding implementing acts in relation to nuisance-causing plants classified into categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- Decree 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.
- Decree of 28 June 1985 on the environmental licence in relation to nuisance-causing plants classified into categories 2 and 3, as well as unclassified infringements in the open countryside.
- Decree 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 act of 12 December 2008 implementing Title XVI of the decree 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 establishments classified into category 1 according to Appendix 1 to Title 1 of Vlarem – within the framework of the abovementioned laws, decrees and regulations – based on sensory perceptions, and to conduct investigations in the sense of Article 16.3.14 of the Environmental Enforcement Decree.

2.4.3.1 Burgomasters

For this first environmental enforcement report it was decided that a separate questionnaire for burgomasters, on the one hand, and municipal supervisors, on the other, might involve too much of an administrative burden on the services questioned. That is why an alternative questionnaire was drawn up, which was more limited than the originally proposed separate questionnaires. As this questionnaire did not include questions relating to the administrative and safety measures imposed by burgomasters,

no data are available on this. It is therefore essential for the VHRM to pay sufficient attention to this matter in the methodology for future environmental enforcement reports.

2.4.3.2 Municipal supervisors

To obtain an insight into the organisation and efforts of local environmental enforcement, 308 Flemish cities and municipalities were asked, via a questionnaire, to provide information related to the appointment of supervisors, the organisation of monitoring activities in the municipality, the number of environmental enforcement inspections carried out, and the result of those inspections. The results of the environmental enforcement inspections will be discussed in Chapter 3, where an evaluation per enforcement instrument will provide insight. In the present chapter an attempt will be made to provide a picture of:

- the appointment of supervisors by the Flemish cities and municipalities;
- the number of appointed supervisors per municipality;
- the average amount of time dedicated to supervisory duties by supervisors;
- the organisation of monitoring activities in cities and municipalities;
- the number of inspections carried out per municipality and per supervisor.

RESPONSE FROM THE MUNICIPALITIES CONCERNING THE REQUEST FOR INFORMATION

In order to put the figures below relating to environmental enforcement on the municipal level in the right perspective, it is important to gain insight into the response of the municipalities to the questionnaire for the Environmental Enforcement Report 2009.

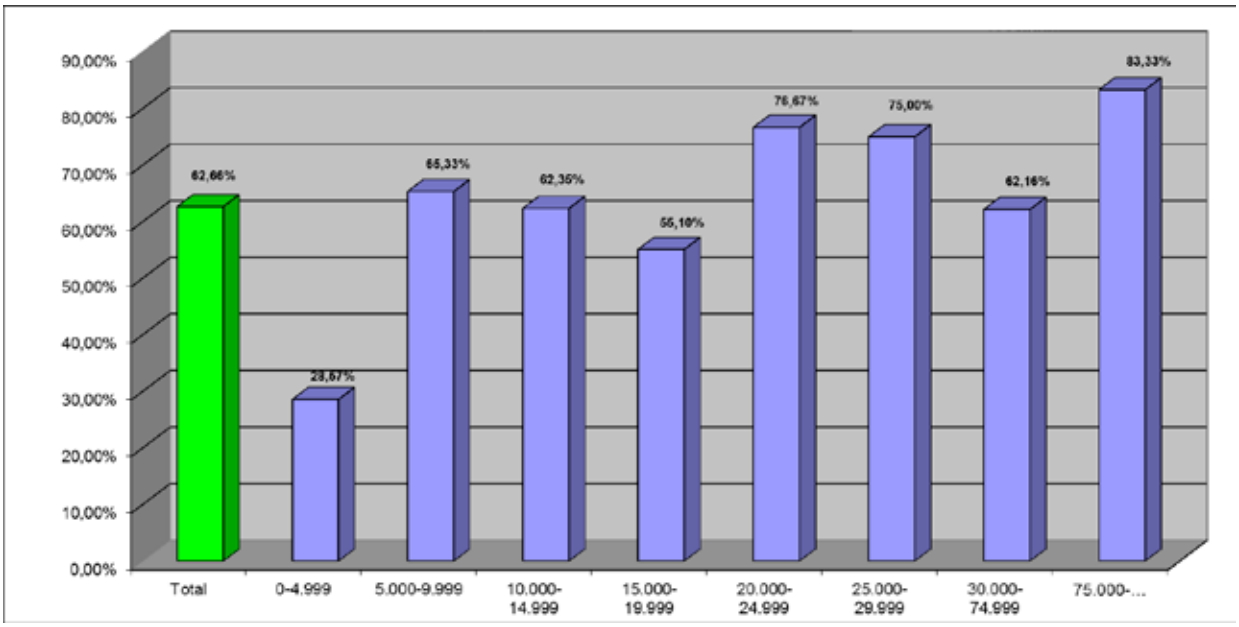
In total, the VHRM received an answer from 193 of the 308 Flemish municipalities. A list of these municipalities can be found in Appendix 1 to this report.

In order to get an idea of the differences between the different 'types' of municipalities, it was decided to reflect 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	4
municipalities with 5.000-9.999 inhabitants	75	49
municipalities with 10.000-14.999 inhabitants	85	53
municipalities with 15.000-19.999 inhabitants	49	27
municipalities with 20.000-24.999 inhabitants	30	23
municipalities with 25.000-29.999 inhabitants	12	9
municipalities with 30.000-74.999 inhabitants	37	23
cities with more than 75.000 inhabitants	6	5

Table 7) *Categories of Flemish cities and municipalities, number of cities and municipalities per category and number of respondents per category*

This subdivision of municipalities was chosen over a subdivision based on e.g. province or the so-called Dexia clusters, because the differences between the various categories are most visible this way. The division into categories was made based on the number of inhabitants provided by the municipalities in the questionnaire.



Graph 13) *Degree of response (%) to questionnaire for municipalities (according to population)*

With respect to the 308 Flemish cities and municipalities the VHRM received answers from 62.66% of the municipalities. Only for municipalities with a population of 0-4,999 the response was low – 4 out of 14 municipalities 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 varied between 55.10% and 83.33% of the municipalities in the category in question. For these categories, it was assumed, with a view to the conclusions of this report, that the responding municipalities were representative of the category they represented. However, a bias must be taken into account: it is a fact that the 'good students' are the ones who answer, so distorted results are a real possibility.

EFFORTS RELATED TO ENVIRONMENTAL ENFORCEMENT DUTIES

Nuisance-causing plants per municipality

Cities and municipalities were asked how many licensed establishments falling into categories 1, 2 and 3 according to Appendix I to Title I of Vlarem were 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 monitoring.

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 facilities on their territory.

Number of inhabitants	*Number of respondents per population category*	*Category 1 establishments*			Category 2 establishments			Category 3 establishments			Unlicensed establishments		
		Total number according to question-naire	Average number per municipality	Number of municipalities that have no information on number of Category 1 establishments	Total number according to question-naire	Average number per municipality	Number of municipalities that have no information on number of Category 2 establishments	Total number according to question-naire	Average number per municipality	Number of municipalities that have no information on number of Category 3 establishments	Total number according to question-naire	Average number per municipality	Number of municipalities that have no information on number of unlicensed establishments
0-4,999	4	49	12,25	0	1.011	252,75	0	88	29,33	1	0	0,00	4
5,000-9,999	49	1.043	24,83	7	4.630	107,67	6	9.735	256,18	11	1.110	69,38	33
10,000-14,999	53	1.318	29,95	9	6.622	154	10	18.659	444,26	11	1.353	75,17	35
15,000-19,999	27	770	29,62	1	4.581	176,19	1	10.739	413,04	1	667	55,58	15
20,000-24,999	23	788	37,52	2	3.867	184,14	2	13.829	658,52	2	148	29,60	18
25,000-29,999	9	284	31,56	0	1.978	219,78	0	5.305	663,13	1	10	10,00	8
30,000-74,999	23	2.070	103,50	3	6.692	334,60	3	18.276	961,89	4	618	77,25	15
75,000-…	5	862	215,50	1	3.098	774,50	1	13.367	3.341,75	1	150	150,00	4
Total	**193**	**7.184**	**42,26**	**23**	**32.479**	**191,05**	**23**	**89.998**	**558,99**	**32**	**4.056**	**66,49**	**132**

Table 8) *Nuisance-causing plants per municipality*

The 193 responding municipalities reported 7,184 licensed Category 1 establishments on their territory. Based on these figures, the monitoring competence of a Flemish municipality could therefore be said to refer to an average of 42.26 Category 1 companies.[31] However, it should be taken into account that 23 municipalities were unable to indicate the number of Category 1 establishments on their territory.

The number of municipalities that have no information on the number of Category 2 establishments on their territory is also 23, or 11.91%. When it comes to the number of establishments subject to a reporting obligation, this number even increases to 32 of the 193 responding municipalities, or 16.58%. Many municipalities do not have a clear idea of the number of establishments in each Category. This may be a result, in part, of the fact that many establishments ended up in a lower category after subsequent changes to the Classification List (mainly on 1 March 2008), and possibly also because it had been announced for many years that a joint database of environmental licences for the three levels of government would be created. Taking into account these figures, it can therefore be said that, roughly speaking, 1 out of every 10 municipalities do not have figures on the number of nuisance-causing plants on their territory with a view to drawing up an effective inspection plan or an efficient organisation or assessment of efforts in the area of environmental enforcement.

It is extremely important – not only with a view to planning their own environmental enforcement efforts, but also to comply with the national and regional legislation – for cities and municipalities to have information on the number of establishments on their territory. Municipalities with more than three hundred Category 2 establishments are required to have two supervisors at their disposal within two years of the coming into effect of the Environmental Enforcement Decree and its implementing acts.[32] This is therefore a key issue for the future for 23 out of 193 municipalities.

The municipalities that turned out to be best informed of the number of nuisance-causing plants falling under their competence were those in the categories with 15,000-19,999, 24,000-29,999 and 25,000-29,999 inhabitants. For smaller municipalities – i.e. municipalities with populations of 5,000-9,999 and 10,000-14,999 – this percentage is slightly higher than the average for all Flemish cities and municipalities. For larger municipalities and cities – those with 30,000-74,999 inhabitants – the share is also very close to the Flemish mean. What is remarkable is the fact that cities and large municipalities do worst when it comes to information on the number of nuisance-causing plants. 20% of large cities report that they do not have complete information on such activities on their territory.

However, it is not surprising to find that some of the municipalities were unable to indicate the number of Category 1, 2 and 3 establishments. 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. 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 decree of 11 June 2010 amending the decree of 28 June 1985 on the environmental licence by introducing measures related to the peak in environmental licences adds Article 28*bis*, which stipulates that the division of the Department of Environment, Nature and Energy that is in charge of environmental licences shall keep a database of environmental licences. The Flemish Government shall determine the content of the database of environmental licences, the data to be provided to the aforementioned division by

[31] This figure cannot be extrapolated to the entire Flemish Region. This is not solely because only 62.66% of the municipalities responded, but also because various large, industrial cities and municipalities did not submit a response.

[32] However, if necessary this can also be calculated based on the number of inhabitants.

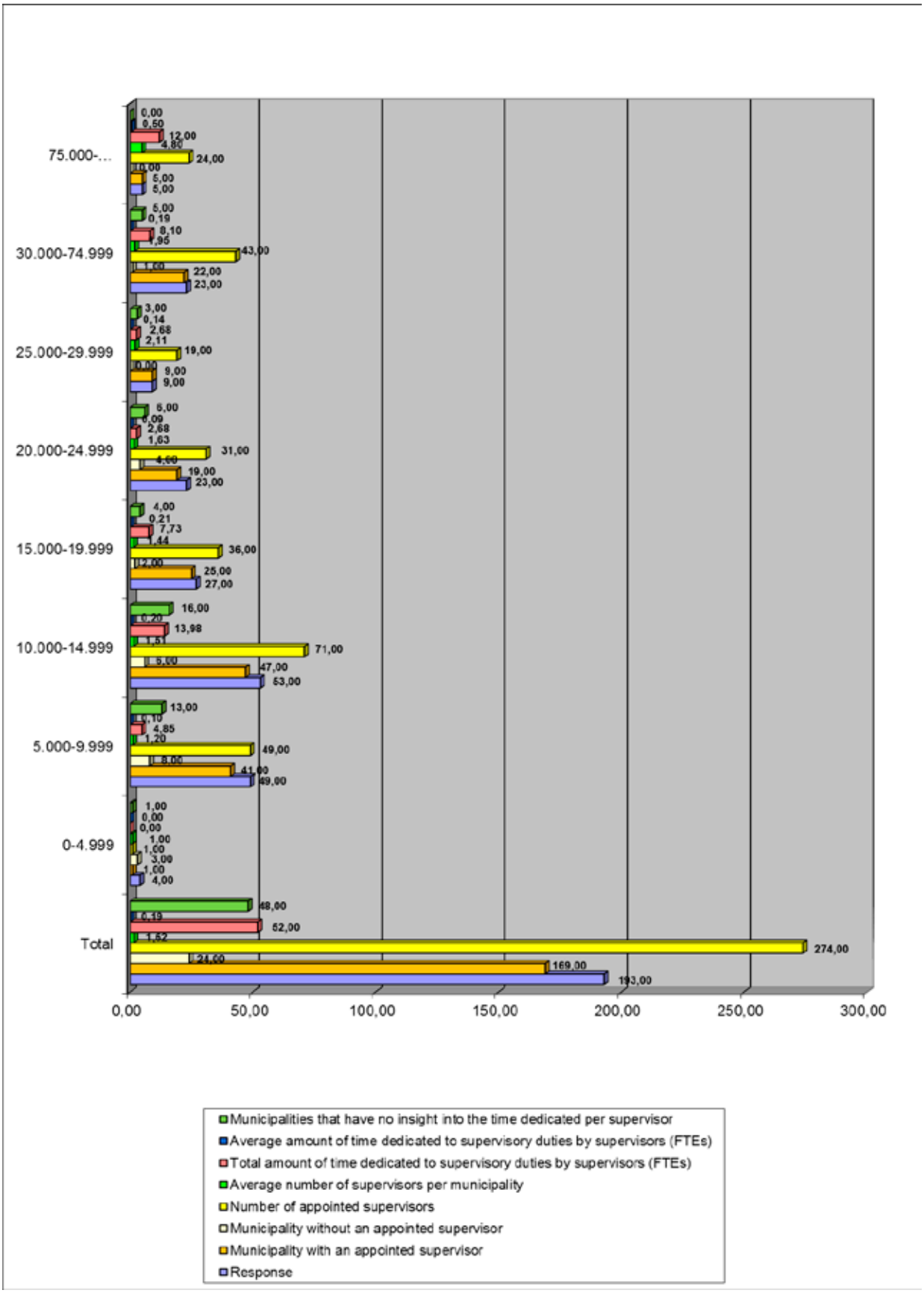
municipalities and provinces, and the way in which this should take place. As a result, better information will be available in future with a view to the development of a policy on this matter.

Besides the question about the number of licensed nuisance-causing plants, cities and municipalities were also asked about the estimated number of unlicensed establishments on their territory. 68.40% of the responding municipalities reported that they did not have information on this. The remaining 61 municipalities indicated that the number of unlicensed establishments can be estimated at 4,056, or an average of 66.49 unlicensed nuisance-causing plants per municipality which stated a number of unlicensed establishments in the questionnaire. However, it should be noted that there is no certainty as to the way in which this figure should be interpreted. The figures obtained are only representative of the municipalities which responded, and only insofar as they interpreted the question correctly. Hence, these data cannot be transposed to all Flemish municipalities. While a lack of information concerning the number of nuisance-causing plants leads to insufficient possibilities to efficiently 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 why municipalities, and, in particular, burgomasters, did not take appropriate enforcement action. As a recommendation to those cities and municipalities, it could therefore be proposed that priority be given in the municipal inspection plans to the monitoring of these unlicensed nuisance-causing plants. On the other hand, it may be inevitable that the municipal authorities do not have a complete picture of the number of establishments that have not reported to them.

Appointment of municipal supervisors and time dedicated

Article 16§1 of the act of 12 December 2008 implementing Title XVI of the decree 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 act, i.e. on 1 May 2010. This can be either a municipal supervisor, or a supervisor of an intermunicipal association, or a supervisor of a police district. Within two years of the coming into effect of this act, municipalities with more than three hundred Category 2 establishments, according to Title I of Vlarem, or with more than thirty thousand inhabitants if the number of establishments is insufficiently known, are required to have two supervisors at their disposal, either municipal supervisors, or supervisors of intermunicipal associations, or supervisors of police districts.

Although the end date to comply with these provisions had not yet been reached during the study period, it seemed appropriate nevertheless to make an interim evaluation. To this end, the municipalities were asked whether they had '(a) supervisor(s)' or 'a Vlarem official' at their disposal. Hence, the graph and table below include information on whether the responding municipalities appointed a supervisor. Besides information on the appointment of a supervisor, the number and the time dedicated by the supervisor are also displayed.



Graph 14) 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	193	4	49	53	27	23	9	23	5
Municipality with an appointed supervisor	169	1	41	47	25	19	9	22	5
Municipality without an appointed supervisor	24	3	8	6	2	4	0	1	0
Number of appointed supervisors	274	1	49	71	36	31	19	43	24
Average number of supervisors per municipality	1,62	1,00	1,20	1,51	1,44	1,63	2,11	1,95	4,80
Total amount of time dedicated to supervisory duties by supervisors (FTEs)	52,00	0,00	4,85	13,98	7,73	2,68	2,68	8,10	12,00
Average amount of time dedicated to supervisory duties by supervisors (FTEs)	0,19	0,00	0,10	0,20	0,21	0,09	0,14	0,19	0,50
Municipalities that have no insight into the time dedicated per supervisor	48	1	13	16	4	6	3	5	0

Table 9) *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 Decree, and of those which still need to take action in this respect.

169 municipalities – or 87.56% – of the 193 Flemish cities and municipalities that responded to the request for information turned out to already have an appointed supervisor at their disposal. Only 12.44% of municipalities will still need to make an effort in the period from 1 January 2010 to 1 May 2010 to comply with the provisions of Article 16 of the act of 12 December 2008.

When looking at the appointment of supervisors per category of municipalities, one can observe that it is especially the small municipalities which do not have a supervisor yet. In the smallest category – that with 0-4,999 inhabitants – as few as 1 out of 4 responding municipalities report having an appointed supervisor. Next in the ranking, after the smallest municipalities, are the municipalities with 5,000-9,999 and those with 20,000-24,999 inhabitants. In these categories 16.32% and 17.39% of municipalities, respectively, do not have a supervisor at their disposal. The largest municipalities, for their part, did manage to appoint supervisors. In the category with 25,000-29,999 inhabitants and in that of cities with more than 75,000 inhabitants none of the responding cities or municipalities report that they have not yet appointed a supervisor. In the category of municipalities with 30,000-74,999 inhabitants 1 out of 23 responding municipalities (= 4.35 %) did not have a supervisor among its personnel.

For those municipalities that have a supervisor at their disposal, i.e. 169 out of 193 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 had a supervisor at their disposal).

The 169 aforementioned municipalities had 274 supervisors at their disposal during the study period. This comes down to 1.62 supervisors per average Flemish city or municipality. Graph 16 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 act of 12 December 2008 implementing Title XVI of the decree 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. Large cities, with a population of more than 75,000 inhabitants, seem to fulfil this requirement already and report 24 appointed supervisors for 5 municipalities, or an average of 4.80 supervisors per municipality. In the category with 30,000-75,000 inhabitants this average is 1.95 supervisors per municipality. It must be noted here that there is currently no need to take action with respect to these municipalities, as no detailed information is available to determine whether these municipalities should have appointed a second supervisor based on the number of nuisance-causing plants, and in any case they have time to comply with this requirement until 1 May 2011.

It is remarkable to find that in the responding municipalities with 25,000 to 29,999 inhabitants and a supervisor an average of 2.11 supervisors is recorded. The decree stipulates that only municipalities with more than 30,000 inhabitants or more than 300 Category 2 nuisance-causing plants are required to appoint two supervisors. Even so, table 8) shows an average of 219.78 Category 2 establishments per municipality for these municipalities. In other words, municipalities in this category have more supervisors at their disposal than they are legally required to.

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

- the total amount of time dedicated to supervisory duties by supervisors in FTEs;
- the average amount of time dedicated to supervisory duties per supervisor in FTEs;
- the number of municipalities that have no insight into the time dedicated per supervisor.

From this information it is clear that 1 out of 4 municipalities have no insight into the time dedicated to supervisory duties by supervisors. However, such insight is essential with a view to setting up purpose-oriented enforcement campaigns and/or drawing up an efficient and effective enforcement plan.

For the responding Flemish cities and municipalities the total amount of time dedicated in FTEs was 52.00 for 274 appointed supervisors. Based on these figures, an average municipal supervisor can only effectively 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 amounts of time dedicated in the smallest municipalities are 0.00 and 0.10 FTEs, this is 0.50 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 30,000-75,000. In

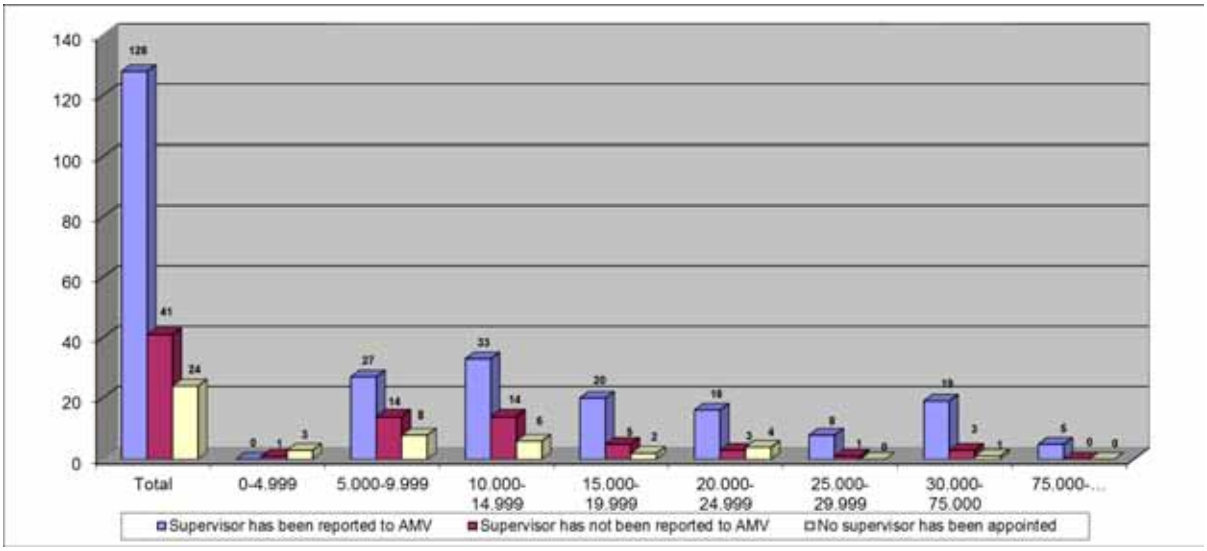
the latter category the amount of time dedicated to supervisory duties per supervisor is only 0.19 FTEs, which puts these cities and municipalities on the same level as municipalities with 10,000-19,999 inhabitants. What is also remarkable is that in the intermediate group – municipalities with 20,000-24,999 and 25,000-29,999 inhabitants – appointed supervisors are given significantly less time for the performance of supervisory duties than both the categories with bigger and those with smaller populations.

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

Graph 14) already mentioned municipalities that had appointed a supervisor and those that had not yet done so. This information is included in the graph below as well 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 AMV.

For non-regional supervisors – provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and supervisors of police districts – the coming into force of the Environmental Enforcement Decree and its implementing acts means that:

- provincial supervisors, municipal supervisors, supervisors of intermunicipal associations and supervisors of police districts are required to have a certificate of competence (Article 13 of the Flemish Government Act of 12 December 2008 implementing Title XVI of the decree 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 abovementioned act. 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 act);
- in accordance with Article 15 of the Flemish Government Act 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 act, 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 Decree. Based on these documents, the Environmental Licences Division will then deliver a certificate of competence and proof of identity.



Graph 15) Appointment and reporting of municipal supervisors to AMV (according to population)

As at 31 December 2009, 75.73% of the 169 responding municipalities with an appointed supervisor had already effectively reported that supervisor to the Environmental Licences Division of the LNE Department.

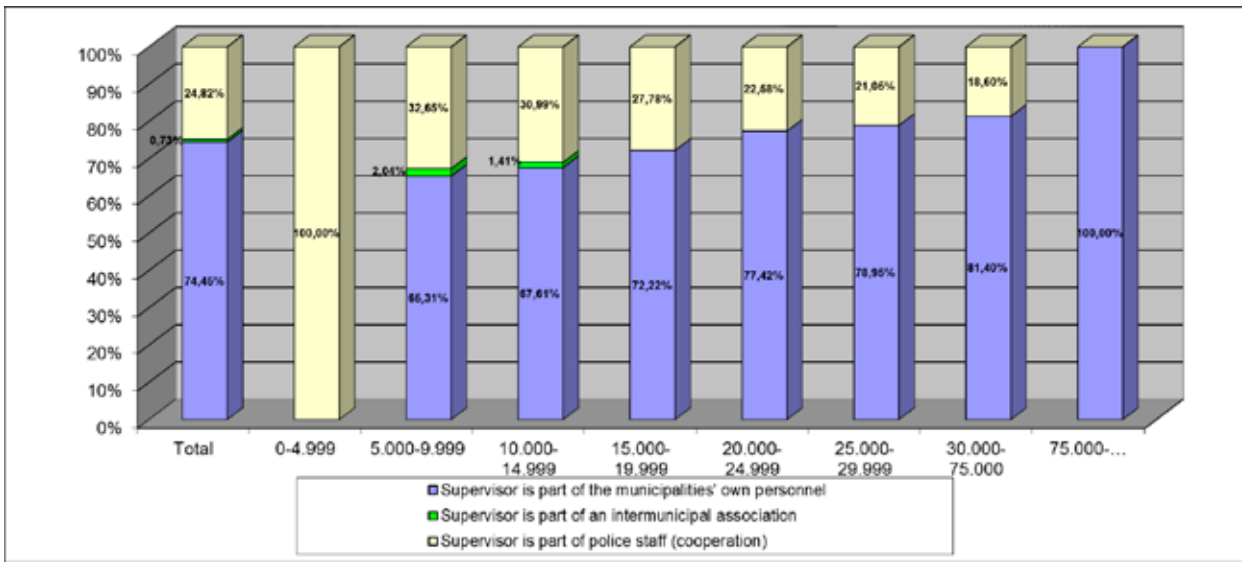
Here as well, a clear trend linked to the size of the municipality can be observed. Whereas in municipalities with 0-4,999 inhabitants 100% of supervisors had not been reported yet, in large cities with more than 75,000 inhabitants all appointed supervisors had already been reported to AMV in the course of 2009.

Once more, the reliability of the data obtained in this context is questionable, but this is all the more reason to conclude that the municipalities are not familiar enough yet with the terminology and procedures of the Environmental Enforcement Decree. Taking this conclusion into account, it seems appropriate to focus attention on the importance of timely and correct reporting of supervisors to be appointed via an organisation such as the Association of Flemish Cities and Municipalities.

Organisation of municipal monitoring activities

Earlier in this chapter we have already referred to Article 16§1 of the Act of 12 December 2008 implementing Title XVI of the decree 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 act, i.e. on 1 May 2010. This can be either a municipal supervisor, or a supervisor of an intermunicipal association, or a supervisor of a police district. Within two years of the coming into effect of this act, municipalities with more than three hundred Category 2 establishments, according to Title I of Vlarem, or with more than thirty thousand inhabitants if the number of establishments is insufficiently known, are required to have two supervisors at their disposal, either municipal supervisors, or supervisors of an intermunicipal association, or supervisors of a police district.

In the graph below, it is indicated per category of municipalities how they put the duty of the municipal supervisor into practice between 1 May 2009 and 31 December 2009: with their own personnel, or with personnel of an intermunicipal association or the police district.



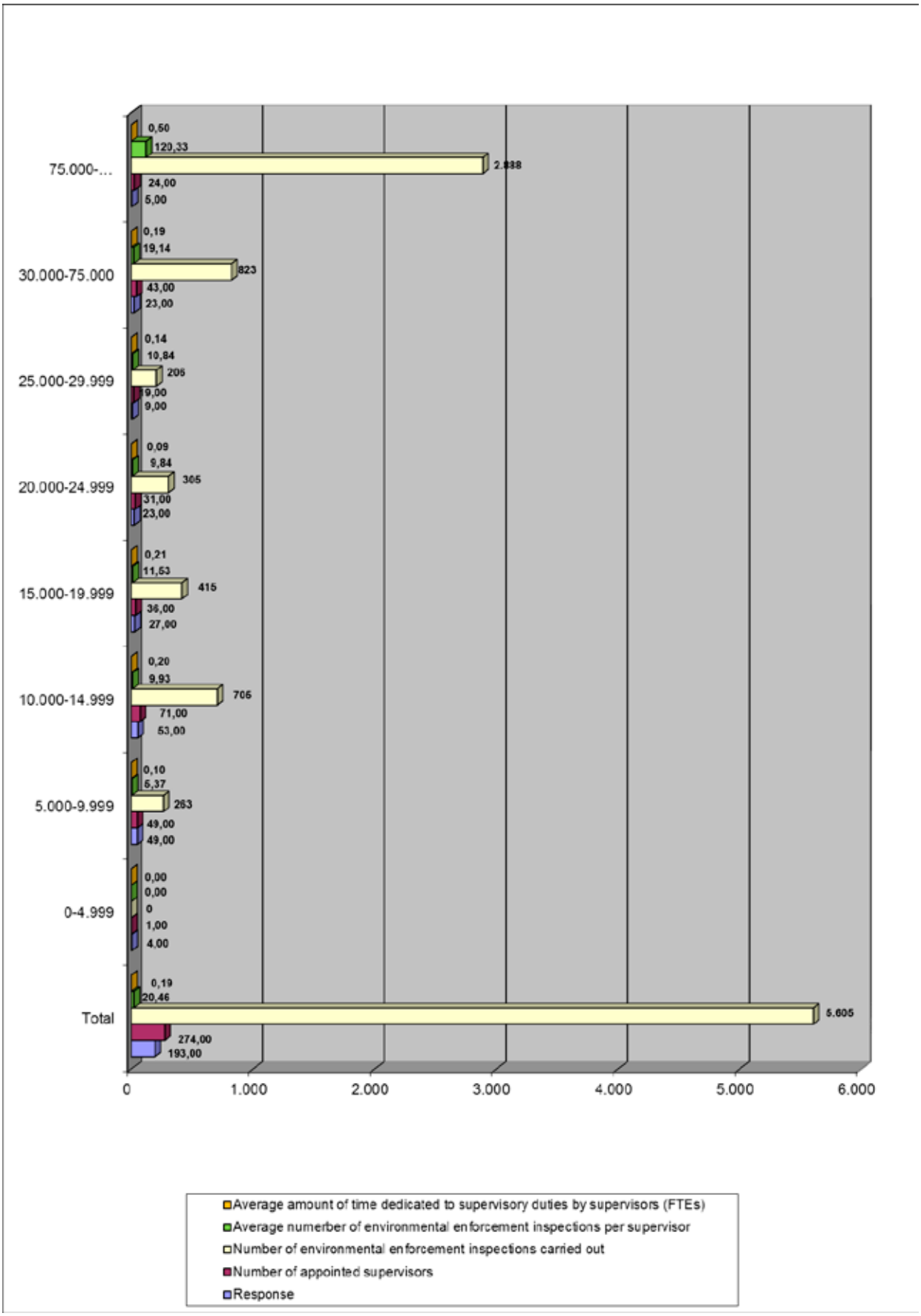
Graph 16) Organisation of municipal monitoring activities (according to population)

The 193 responding municipalities used 274 supervisors for environmental enforcement tasks. 204 (74.45%) of these supervisors belonged to the municipalities' own personnel. 68 further supervisors (24.82%) belonged to a police district and 2 supervisors (0.73%) of an intermunicipal association were used.

From the graph above, a clear trend linked to the size of the municipality can be observed. Whereas smaller municipalities more often use a supervisor of the police district, and less often supervisors belonging to their own personnel, it is clear that in large cities 100% of the appointed supervisors belong to the city's personnel. In the 2009 study period only 2 municipalities used an appointed supervisor from an intermunicipal association. These were municipalities with a population between 5,000 and 14,999 inhabitants. Intermunicipal associations are discussed in more detail in Chapter 2.4.3.3.

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 graph and table below show 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 results of these inspections will be discussed in the evaluation of the individual enforcement instruments in Chapter 3.



Graph 17) Efforts related to environmental enforcement duties by municipal supervisors (according to population)

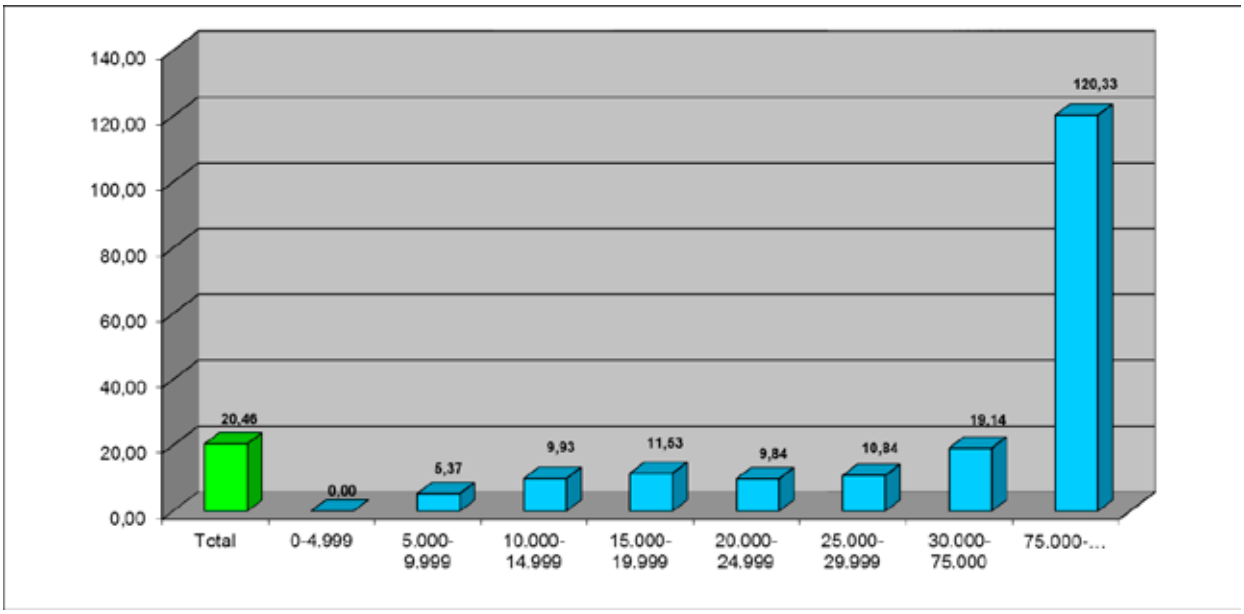
	Total	0-4.999	5.000-9.999	10.000-14.999	15.000-19.999	20.000-24.999	25.000-29.999	30.000-74.999	75.000-...
Response	193	4	49	53	27	23	9	23	5
Number of appointed supervisors	274	1	49	71	36	31	19	43	24
Number of environmental enforcement inspections carried out	5.605	0	263	705	415	305	206	823	2.888
Average number of environmental enforcement inspections per supervisor	20,46	0,00	5,37	9,93	11,53	9,84	10,84	19,14	120,33
Average amount of time dedicated to supervisory duties by supervisors (FTEs)	0,19	0,00	0,10	0,20	0,21	0,09	0,14	0,19	0,50

Table 10) *Efforts related to environmental enforcement duties by municipal supervisors (according to population)*

In the period from 1 May 2009 to 31 December 2009 the 274 appointed supervisors for the 193 responding municipalities carried out 5,605 environmental enforcement inspections. However, in the assessment of the figures of the individual municipalities it is notable that 34 of these municipalities indicate that no environmental enforcement inspections were carried out during this period. Earlier in this chapter it was already found that 24 municipalities did not have an appointed supervisor yet. Hence, in addition to those 24 municipalities, there were also 10 municipalities with an appointed supervisor where no environmental enforcement inspections were reported to have been carried out.

Here as well, a correction must be made. 8 of the 193 responding municipalities that did not have a supervisor or Vlarem official in the course of 2009 nevertheless reported having carried out environmental enforcement inspections. The only conclusion that can be drawn from this is that these inspections either took place without a legal basis, or that they were not environmental enforcement inspections in the framework of the Environmental Enforcement Decree. Notwithstanding the foregoing, this would mean that not in 10, but in 18 of the responding municipalities no environmental enforcement inspections were carried out.

In summary, this means that in 1 out of 10 municipalities with an appointed supervisor no environmental enforcement inspections were carried out in the 2009 study period. Furthermore, in the remaining municipalities the amount of time spent on supervisory duties by the appointed supervisors is very small, which translates into a very low average number of environmental enforcement inspections per appointed supervisor in the graph below.



Graph 18) Average number of environmental enforcement inspections per supervisor (according to population)

With the exception of large cities with more than 75,000 inhabitants, it is clearly very difficult for most municipalities to put the competences defined in the Environmental Enforcement Decree into practice. Although 87.56% of municipalities reported that they had already appointed a municipal supervisor, in practice it turns out that these supervisors had very little time to spend on supervisory tasks. What is more, in 10.56% of cases the appointment of a supervisor turned out to be only for appearance's sake, because the persons appointed made no efforts at all in the framework of the Environmental Enforcement Decree.

Where the appointed supervisor is given possibilities – although often very limited ones – to put the duties assigned under the Environmental Enforcement Decree into practice, the average number of inspections performed varies between 5 and 20 environmental enforcement inspections per supervisor between 1 May 2009 and 31 December 2009. Only in large cities do supervisors manage to dedicate enough time to the duties assigned to them, which results in an average of 120.33 environmental enforcement inspections per supervisor in the period between 1 May 2009 and 31 December 2009. In this context, intermunicipal associations – which will be discussed in the next section – may offer a solution.

Based on these findings a first question that can be asked is whether the municipal authorities are sufficiently prepared to actually carry out enforcement activities, and, if so, whether there is sufficient time to spend on enforcement, allowing supervisors to gain experience and become more professional in their enforcement activities (most supervisors do not work in enforcement full-time[33], and there is usually no separation from other environment-related duties). Secondly, it is also possible that enforcement on the local level could be improved through support from the Flemish Government in the appointment of municipal supervisors. In fact, DABM provided a legal basis for this.[34] Article 16.3.4 states: 'Within budgetary limits, the Flemish Government may subsidise the appointment of the supervisors mentioned in Article 16.3.1, § 1, 2°, 3°, 4° and 5°, as well as provide support for the training and permanent education of those supervisors. The Flemish Government can lay down further rules for this.'

[33] See graph 17.

[34] To this end, in 2009 plans were made for the preparation of an addendum to the Cooperation Agreement 2008-2013.

2.4.3.3 Intermunicipal associations

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

In the questionnaire sent to the municipalities by the VHRM it was therefore asked whether the supervisors belonged to the municipality itself, to an intermunicipal association or to the police district.

Graph 16) showed that only two smaller municipalities stated that their supervisors belonged to an intermunicipal association.

However, it should be noted that in one of these municipalities the supervisor was in training during the 2009 study period, and was hence unable to act as supervisor at the time, given that the required certificate of competence is only delivered after completion of the training.

The second intermunicipal supervisor worked in two smaller municipalities during the 2009 study period. The inspections carried out by this supervisor were reactive inspections following complaints.

Even so, the VHRM considered it important to know to what extent this network of intermunicipal supervisors was already being set up in 2009. Via the Association of Flemish Cities and Municipalities (VVSG) some intermunicipal associations were asked which (formal) actions had been taken between 1 May 2009 and 31 December 2009.

From the reactions it could be concluded that until today no concrete steps have been taken to appoint intermunicipal supervisors, and that in the 2009 study period the organisation of intermunicipal monitoring was only in the theoretical stage.

However, one of the questioned intermunicipal associations informed that in the framework of the support relating to 'environment' the municipalities could already count on support for enforcement during the 2009 study period. This support involved proactive inspections in the framework of a systematic approach of nuisance-causing plants, and reactive inspections following environment-related complaints. Approximately fifty inspections[35] were reported to have been performed by the intermunicipal association for 11 municipalities, with special attention for the garage sector and carpentry workshops. On request of the municipalities and the environment officials, site visits were made and advice was given on the approach for diverse nuisance-causing plants, usually following a complaint. In addition, this intermunicipal association started with the preparation and development of a new 'environmental enforcement' service package, in which the municipalities of the intermunicipal association were closely involved.

However, this intermunicipal association did not appoint an intermunicipal supervisor yet in the 2009 study period. The inspections were carried out by personnel of the intermunicipal association (without a Vlarem certificate), usually together with the environment official of the municipality in which the inspection took place. This is also the reason why these data could not be found in the municipalities' questionnaire. A visit by an official without access permission is only possible if the operator voluntarily allows this, or if the official provides support to a supervisor or police officer with access permission.

Nevertheless, the VHRM subscribes to a number of advantages of organising the monitoring of the 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 geographical availability of the supervisor. As the position of supervisor is currently not required to be full-time equivalent, and in smaller municipalities it is

[35] However, it is not clear whether these include only proactive inspections or also inspections in the framework of licensing advice.

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 good 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. Currently, it is often commented that in many cases the environment official (and hence the adviser) is appointed 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 provided.

2.5 CONCLUSION

In the foregoing section the central theme was the Flemish environmental enforcement policy between 1 May 2009 and 31 December 2009. 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 made available for enforcement activities and how many inspections were carried out by the supervisors.

For the evaluation of the regional environmental enforcement policy it was attempted to make a rough estimate of the relationship between the number of appointed supervisors, the supervisory duties, the inspections carried out and the number of FTEs made available for the enforcement activities of the appointed regional supervisors. This showed that the regional actors use different methods. Some actors appointed a large number of supervisors for relatively limited enforcement duties, whereas other organisations carried out more inspections with relatively less supervisors. Therefore, a first conclusion, with the necessary caution, could be that the number of supervisors and the number of formal (statutory) supervisory duties is not always in proportion to the number of inspections that have actually been carried out. However, it needs to be remarked that the number of inspections is not necessarily a point of reference for an assessment of enforcement activities. Consequently, no conclusions whatsoever can be drawn from this proportion as to the effectiveness or the quality of enforcement, as it is very possible that there are good reasons for the varying allocation of personnel and resources. However, it does seem important to study this in more depth. The VHRM has therefore set itself the task of studying the relationship between supervisory duties, number of FTEs and inspections actually carried out.

In the context of the evaluation of the environmental enforcement policy pursued by the federal police, 320 initial official reports were drawn up in the framework of reactive environmental enforcement identifications carried out following reports, complaints or offenders being caught in the act. However, the enforcement activities of the federal police – 909 proactive inspections – clearly concentrated on inspections of waste shipments. Although formally no supervisors can be appointed within the federal police, it should be mentioned that 121 federal police staff were active in environmental enforcement in the Flemish Region and belonged to the environmental network during the study period.

The Environmental Enforcement Decree stipulates that personnel of a police district can be appointed 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 made available for enforcement tasks, the reporting of supervisors, the organisation of monitoring activities within the local police and the number of inspections carried out by these supervisors of the police districts. The VHRM received data from 91 of the 118 police districts in the Flemish Region.

In total, 97 supervisors were appointed within the responding police districts. However, 50 of the 91 police districts did not have a supervisor at their disposal. This means that on average 2.37 supervisors were active within the responding police districts that reported having a supervisor at their disposal. The total time dedicated by these supervisors was 18.22 FTEs, which comes down to an average dedication of 0.19 FTEs per supervisor. As in the municipalities, the supervisors appointed by the local police spent very little time on performing actual supervisory activities.

26 of the 41 police districts that had a supervisor at their disposal had reported this supervisor to the Environmental Licences Division of the Department of Environment, Nature and Energy. It can also be noted that 51.72% of all supervisors appointed by the local police were part of the Environmental Network of the Environment Service of the federal judicial police.

The responding police districts indicated that they had carried out a total of 1,116 environmental enforcement inspections, which comes down to an average of 11.51 environmental enforcement inspections per supervisor during the study period.

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

In the Environmental Enforcement Decree the provincial governors were given a very clearly defined competence, namely the imposition of administrative or safety measures in the framework of certain legislation. During the study period no administrative or safety measures were imposed by the provincial governors. A possible reason for this could be the fact that the questions/requests related to the imposition of administrative measures were wrongly addressed to the governors, or fell outside their competence. Another reason could be the lack of a solid team, support or experience of governors to perform the duties under the Environmental Enforcement Decree.

The Environmental Enforcement Decree stipulates that personnel of the province can be appointed supervisors by the provincial council. However, during the study period no provincial supervisors were appointed, and hence no inspections were carried out in the framework of the Environmental Enforcement Decree. This is taken to be related to the fact that there is uncertainty concerning the training obligation and the exact duties of provincial supervisors.

Nevertheless, 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, a questionnaire similar to that for the regional enforcement actors was conducted on the number of appointed supervisors, the number of FTEs made available for enforcement activities, and the number of inspections performed. It was also asked whether these supervisors had been reported to AMV, and how monitoring activities were organised in the municipality. Nearly 63% of the Flemish municipalities answered the VHRM's questionnaire.

The municipalities were also asked to provide the number of licensed establishments falling into Categories 1, 2 and 3 according to Appendix I to Title I of Vlarem that were located on their territory, and an estimate of the number of unlicensed nuisance-causing plants. The figures showed that roughly 1 out of 10 responding municipalities did not have this information. However, in order to draw up a sound inspection plan and estimate and assess efforts in the area of environmental monitoring, it would be crucial for the municipalities to have this information. What is also remarkable is that 31.61% of the responding municipalities indicated that they estimate the number of unlicensed establishments at an average of 66.49. This means a total of 4,056 unlicensed establishments on the territory of 61 municipalities. This could indicate that these municipalities know about breaches of environmental legislation and are not taking action (insofar as they have identified the unlicensed establishments). The question arises why these municipalities, and, in particular, their burgomasters, did not take appropriate enforcement action. As a recommendation to these municipalities, it could therefore 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 time dedicated by them, it can be concluded that a total of 274 supervisors were appointed by the responding municipalities with a supervisor, with the time dedicated amounting to a total of 52 FTEs, which means 1.62 supervisors per municipality and an average dedication of 0.19 FTEs per supervisor. 75.73% of the responding

municipalities with an appointed supervisor already reported this supervisor to the Environmental Licences Division of the Department of Environment, Nature and Energy during the 2009 study period.

74.45% of the appointed supervisors belonged to the municipalities' own personnel, 24.82% belonged to the police districts and 0.73% of the supervisors belonged to an intermunicipal association.

12.44% of the responding municipalities indicated that they had not yet appointed a supervisor. However, these municipalities still had until 1 May 2010 to appoint a supervisor. Also, some municipalities still had the 'old' Vlarem officials at their disposal. Furthermore, 25% of the responding municipalities had no insight into the time dedicated to supervisory duties by their supervisors, even though this information is important with a view to setting up effective enforcement.

The municipal supervisors carried out a total of 5,605 inspections during the study period, or an average of 20.46 inspections per supervisor. On the other hand, 34 municipalities reported that they had not carried out any inspections. Hence – taking into account that 24 responding municipalities did not have a supervisor at their disposal – there were 10 municipalities with an appointed supervisor where no environmental enforcement inspections were reported to have been carried out.

Where the possibility for municipalities to appoint supervisors via intermunicipal associations is concerned, it was found that in the 2009 study period this possibility was largely in the theoretical stage and still under development. Nevertheless, it may be interesting for smaller municipalities to organise themselves via an intermunicipal association when it comes to environmental enforcement. The appointment of an intermunicipal supervisor could lead to a scale increase when it comes to expertise and geographical availability of the supervisor. It could also lead to a separation of the duties of supervisors and advisers in the licensing procedure.

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 Decree were the point of departure, this chapter is centred around the environmental enforcement instruments available.

The idea is to obtain insight into the use of all 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.

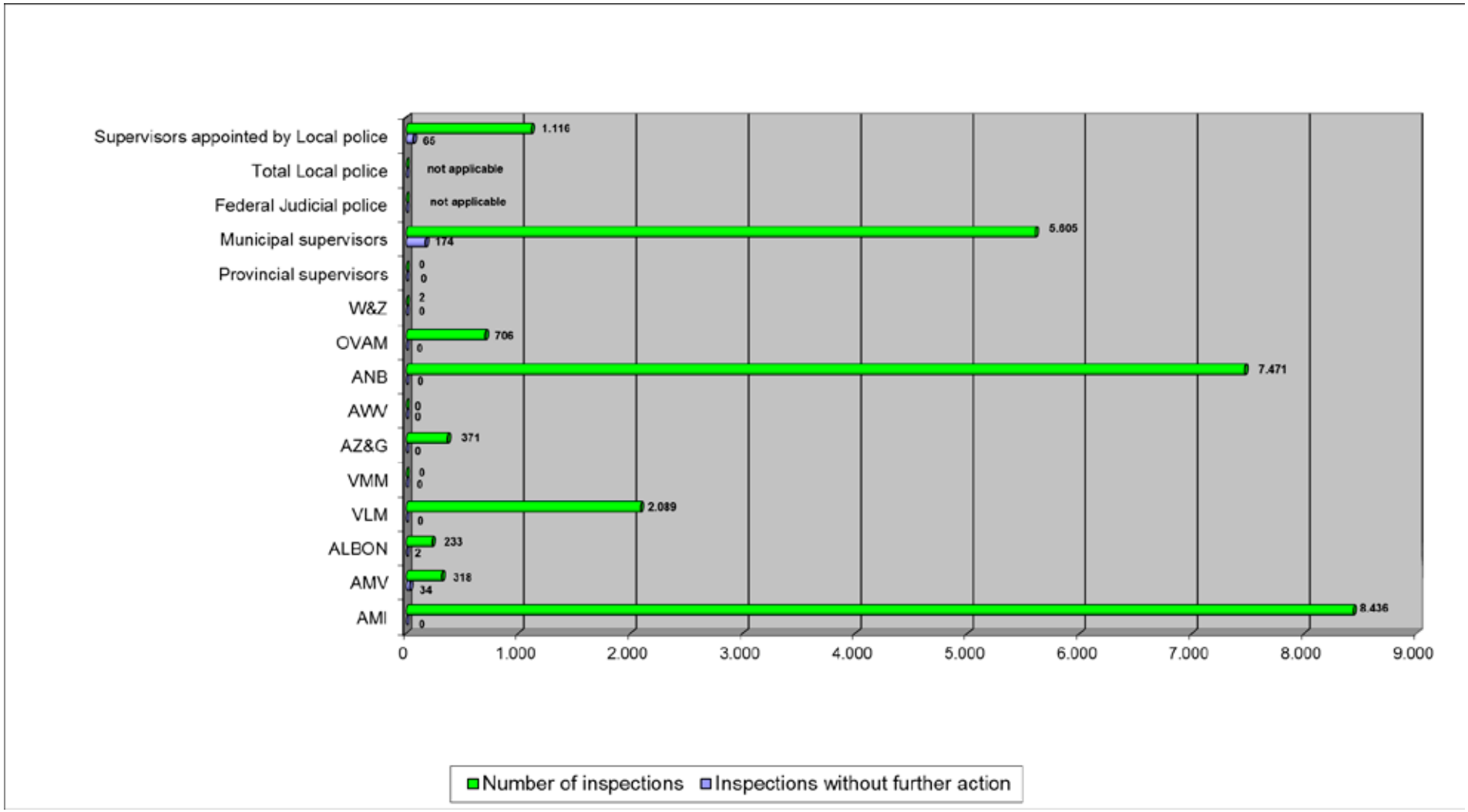
The figures included in this chapter should also be treated with the necessary caution. The figures only refer to the period from 1 May 2009 to 31 December 2009. Many enforcement actors still had to (re)organise or reorient themselves as a result of the new Environmental Enforcement Decree, or wait for 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 Environmental Enforcement Report 2010.

As in Chapter 2 'Evaluation of the Flemish environmental enforcement policy in 2009', the evaluation of the individual enforcement instruments is based on the information received from the enforcement actors. The use of these figures implies that all notes and remarks made above apply here as well.

In this chapter, the different enforcement instruments will be discussed. However, the respondents also indicated that in some cases inspections were carried out where breaches were identified, but no further action was taken, and hence none of the available instruments were used. This will be discussed first in Chapter 3.1.

3.1 'INSPECTIONS WITHOUT FURTHER ACTION'

In the questionnaire the environmental enforcement actors were asked about the number of inspections carried out where breaches – either environmental infringements or environmental criminal offences – of the applicable environmental legislation were identified, but where **no action** was taken. In the graph below the number of 'inspections without further action' is compared to the total number of environmental enforcement inspections carried out by the enforcement actor.



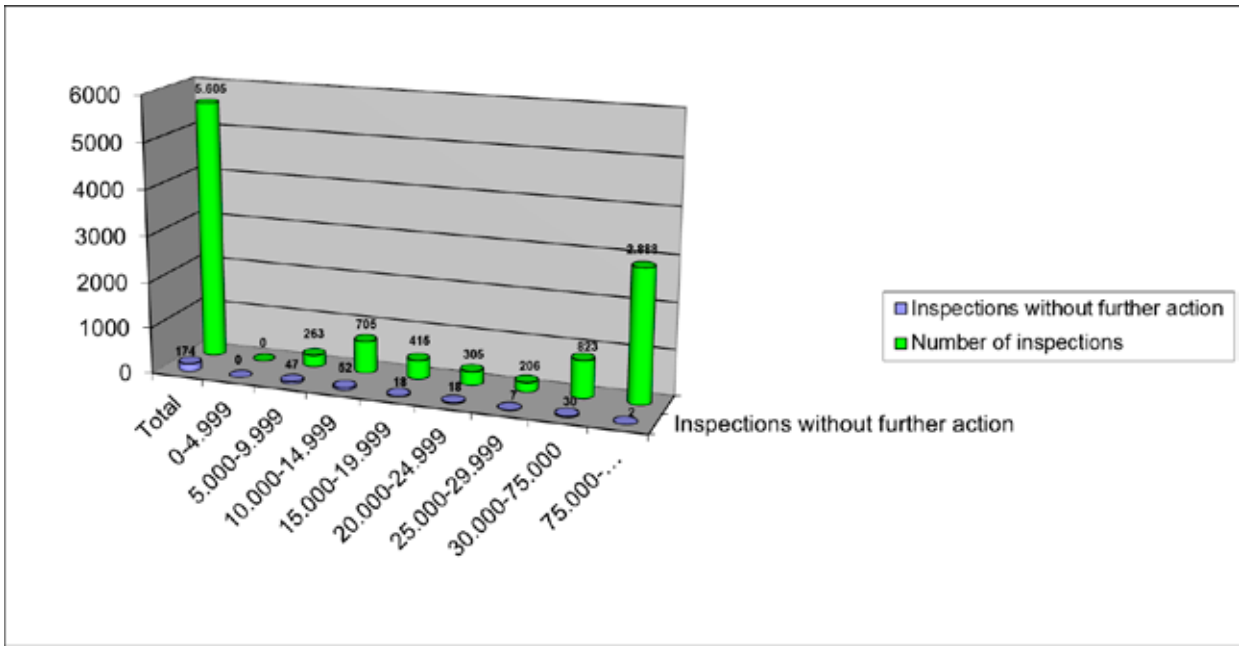
Graph 19) Share of 'inspections without further action'

What is remarkable in the graph is that various actors reported that environmental breaches were identified during inspections and no further action was taken. The reason for this cannot always be given. Based on the data at hand, it cannot be concluded whether follow-up visits were performed to check whether the situation had been corrected.

The Environmental Enforcement Decree stipulates in article 16.3.23 that supervisors can draw up a report when an environmental infringement is identified. In other words, supervisors are not obliged to do so. On the other hand, the code of criminal procedure determines in article 29 that all authorities, public officers or officials who, during the performance of their duties, obtain information on a criminal offence are under the obligation to immediately report this to the public prosecutor of the court of the judicial district in which the crimal 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 abovementioned legal provision. There is obviously 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 Decree makes a whole range of instruments available.

3.1.1 'Inspections without further action' by municipal supervisors

The aforementioned data show that in 3.10 % of all environmental enforcement inspections performed municipal supervisors identify breaches without taking further action. In the graph below the actor 'municipal supervisors' is further divided into categories already used previously:



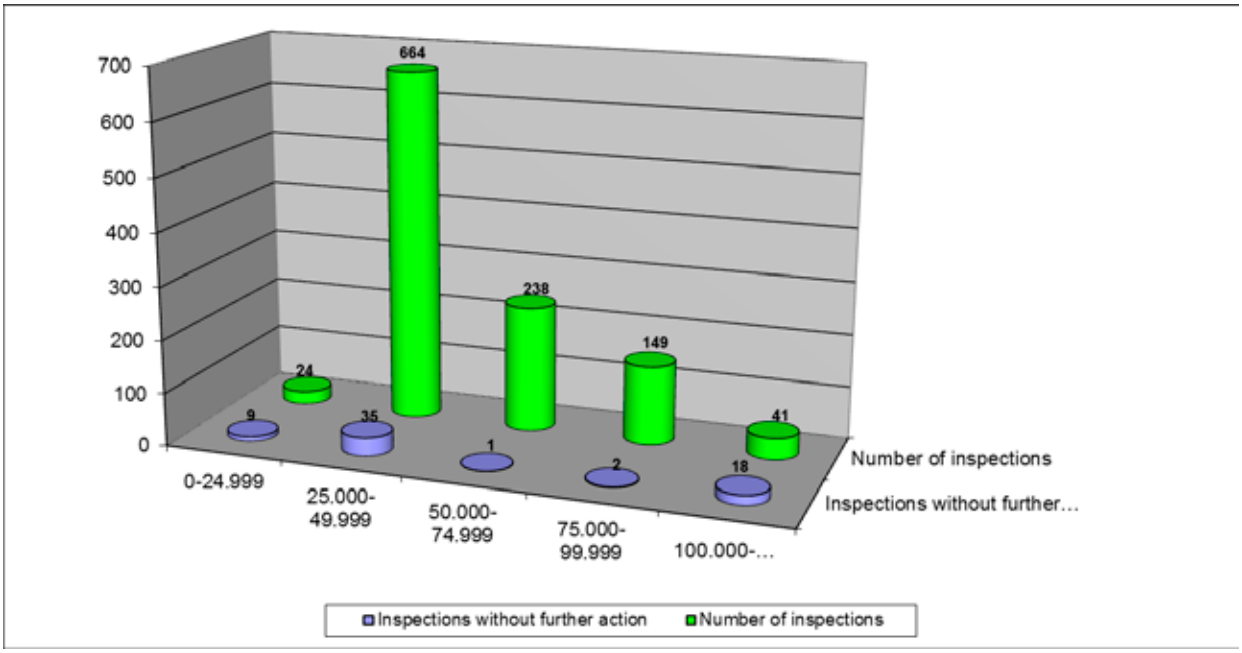
Graph 20) *Number of 'inspections without further action' by municipal supervisors (according to population)*

There seems to be a falling trend in the number of 'inspections without further action' by municipal supervisors depending on the size of the municipality. In large cities and municipalities, with a population of 75,000 or more, only in 2 of a total of 2,888 inspections no action is taken following an identified breach. For municipalities with a population between 15,000 and 75,000 the share of 'inspections without further action' varies between 3.39% and 5.90% of inspections carried out. Especially in the categories with 10,000-14,999 and 5,000-9,999 inhabitants supervisors apparently trust that breaches of environmental legislation will be remedied on the basis of the inspection alone in 7.37% and 17.87% of cases, respectively. However, based on the figures at hand it is not clear whether in these cases follow-up visits were performed to check whether the situation had actually been remedied. Moreover, it cannot be evaluated whether in case of a follow-up visit action was taken when the identified breach had not or insufficiently been remedied.

The evaluation of the enforcement instruments further along in this chapter may be able to provide insight into whether the lack of action by municipal supervisors could find its origin in a lack of knowledge or experience with the other enforcement instruments.

3.1.2 'Inspections without further action' by local police supervisors

Whereas the share of inspections without further action by municipal supervisors was 3.10% of all inspections performed, this share amounted to 5.82% for local police supervisors. The graph below attempts to provide a picture of possible differences between police districts.



Graph 21) *Number of 'inspections without further action' by local police supervisors (according to police district population)*

When it comes to the number of 'inspections without further action' by supervisors appointed by the local police, there seems to be a big difference between supervisors in small (between 0 and 24,999 inhabitants) and large (more than 100,000 inhabitants) police districts, on the one hand, and the other police districts, on the other. In police districts with less than 25,000 inhabitants, a breach is identified without further action being taken in 37.50% of all environmental enforcement inspections. Although no concrete data are available to support this, the cause might be related to the fact that these supervisors often have insufficient possibilities to gain expertise, or have insufficient time to spend on supervisory duties. On the other hand, one would expect the opposite to be true for large police districts (more than 100,000 inhabitants). Nevertheless, it can be seen that in these large police districts infringements and/or offences are identified without further action being taken in 43.90% of all environmental enforcement inspections. Although, once again, we can only guess about the possible causes, other forms of nuisance are probably given priority over these environmental breaches, which results, here as well, in a lack of time and building of expertise in this area. In the other police districts the number of 'inspections without further action' is low, although in police districts with 25,000 to 50,000 inhabitants the number of inspections during which breaches were identified but were not acted upon was still 1 in 20.

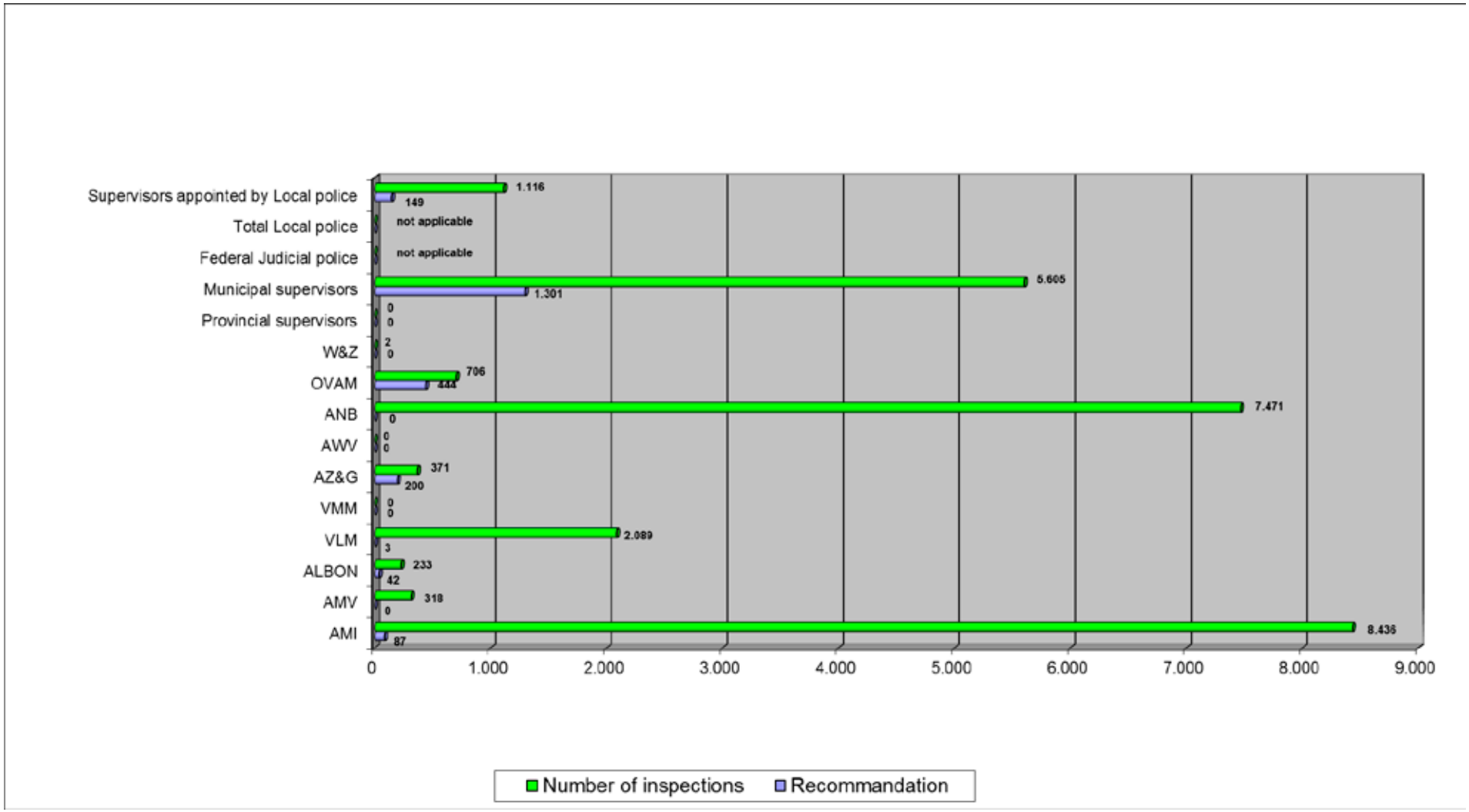
3.2 EVALUATION OF THE INSTRUMENT 'RECOMMENDATION'

In Article 16.3.22 of DABM the instrument 'Recommendation' is described as follows: *'When supervisors observe that an environmental infringement or an environmental criminal offence threatens to occur, they may give all 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 the evaluation of the 'Recommendation' as an enforcement instrument, an important note must be made with the figures below for two enforcement actors. According to the information obtained, the Flemish Land Agency made only 3 recommendations on a total of 2,089 inspections. In reality, the number of Recommendations is probably higher than the reported 1.44% of inspections, given that the Flemish Land Agency indicates that they do not keep records of all Recommendations made.

A second important note was made by the Public Waste Agency of Flanders. In the answers provided by them, no distinction can be made between the number of Recommendations made, on the one hand, and the number of Exhortations, on the other. That is why both in the graph above and in the graph in Chapter 3.3 'Evaluation of the instrument 'Exhortation'' the total figure has been included. The effective number of Recommendations – and the effective number of Exhortations – will therefore most likely be lower than the indicated 62.88%.



Graph 22) *Share of the use of the instrument 'Recommendation'*

At first glance, the results referring to the use of the (preventive) instrument 'Recommendation' confirm the conclusions formulated in Chapter 3.5 with respect to the official report. ALBON and AZ&G use recommendations as an enforcement instrument very frequently, presumably to try to 'prevent' or 'regularise' future illegal situations before an environmental infringement or offence takes place, so that it is not necessary to draw up a report identifying the breaches or an official report. The figures for the actor Waterways and Sea Canal, on the other hand, together with the data included in Chapter 3.5, indicate the reverse strategy. This actor immediately drew up an official report during both inspections, precluding the use of a preventive instrument such as the Recommendation.

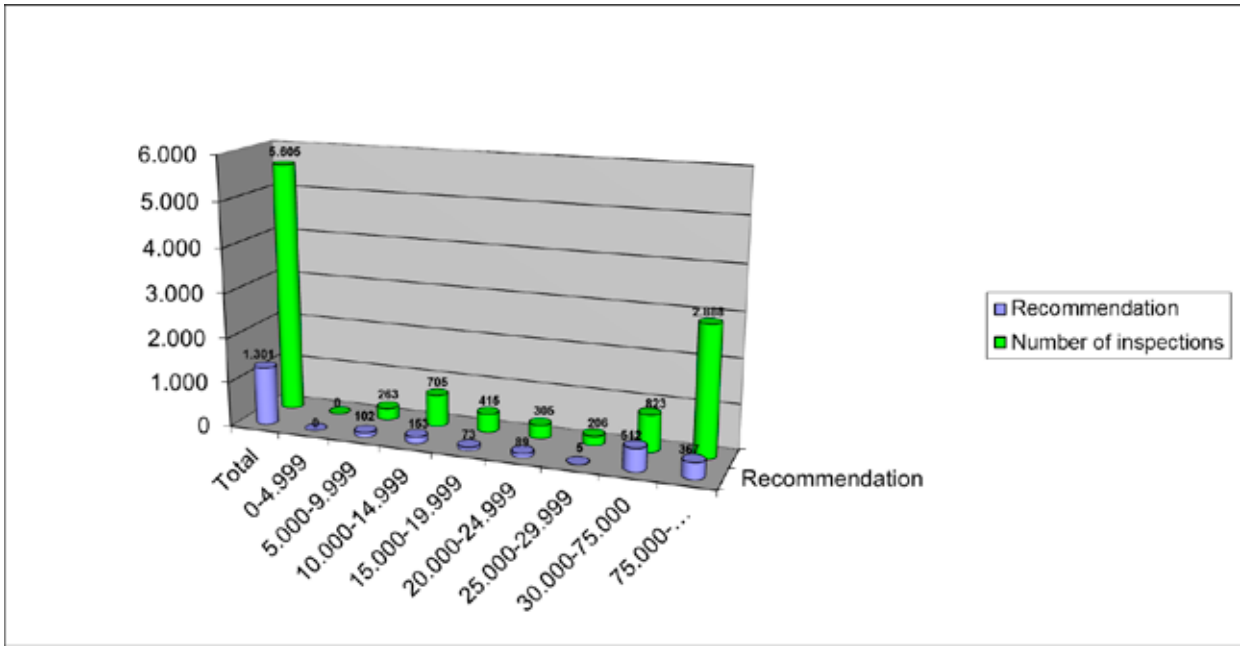
Other enforcement actors that used the instrument 'Recommendation' very little – or not at all – are AMI and ANB, which use it in 1% and 0% of all inspections performed, respectively. Where AMI is concerned, the 'Recommendation' is used exclusively as a '*preventive instrument*', concretely in cases where, in the supervisor's view, there is a real possibility of an environmental infringement/offence occurring in the (near) future.

Possibly, for these enforcement actors the emphasis is on the use of other enforcement instruments which allow them to achieve their objectives. In this context, we refer to the discussions of the other enforcement instruments below.

Among supervisors who are active at the local level, the use of the instrument 'Recommendation' was found to amount to 13.35% for local police supervisors and 23.21% for municipal supervisors. Based on these figures, it can be concluded, with the necessary caution, that no special attention to this enforcement instrument is required. Moreover, in future an evolution may become visible of local supervisors becoming increasingly familiar with all instruments as a result of the fact that experience and expertise are passed on to colleagues.

3.2.1 Share of the use of the instrument 'Recommendation' by municipal supervisors

The graph below illustrates the use of the instrument 'Recommendation' according to the categories used previously.



Graph 23) *Share of the use of the instrument 'Recommendation' by municipal supervisors (according to population)*

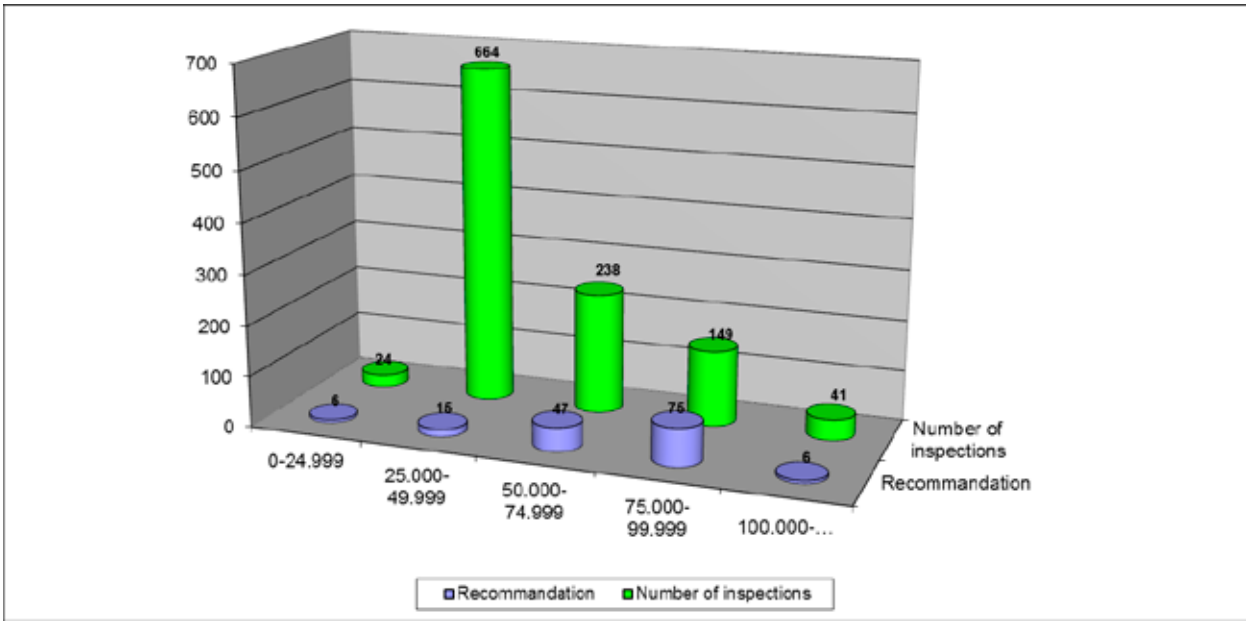
The figures above show that in two categories of municipalities the use of the instrument 'Recommendation' is significantly higher than the average for the municipal supervisors, namely 23.21%.

Especially for large municipalities and smaller cities (the category with 30,000 to 75,000 inhabitants), the use of the instrument amounts to as much as 62.21% of inspections. For municipalities with 5,000 to 9,999 inhabitants, the instrument 'Recommendation' also represents a 38.78% share compared to the number of environmental enforcement inspections carried out. In other words, for these categories it can be said that more than half of all inspections performed – concretely 65.86% for the category with 30,000-74,999 inhabitants and 56.65% for the category with 5,000-9,999 inhabitants – do not result in the use of a curative enforcement instrument. However, during the 2009 study period the supervisors of these municipalities did opt for trying to prevent an imminent infringement or offence with a Recommendation, or for not taking action following identified breaches (see 3.1.1). In any case, before drawing definitive conclusions and formulating recommendations accordingly, it seems appropriate to wait and see what trends can be observed in the next environmental enforcement reports.

Supervisors of municipalities with a population between 25,000 and 29,999 are the ones who use the Recommendation as an enforcement instrument least frequently. Only in 2.43% of inspections carried out by them a Recommendation was formulated. A possible reason for the difference between this percentage and the share of the other municipalities is not easily found.

3.2.2 Share of the use of the instrument 'Recommendation' by local police supervisors

13.35% of the environmental enforcement inspections carried out by local police supervisors led to the formulation of a Recommendation. In the graph below the differences between the police districts are illustrated based on the previously used classification according to population.



Graph 24) *Share of the use of the instrument 'Recommendation' by local police supervisors (according to police district population)*

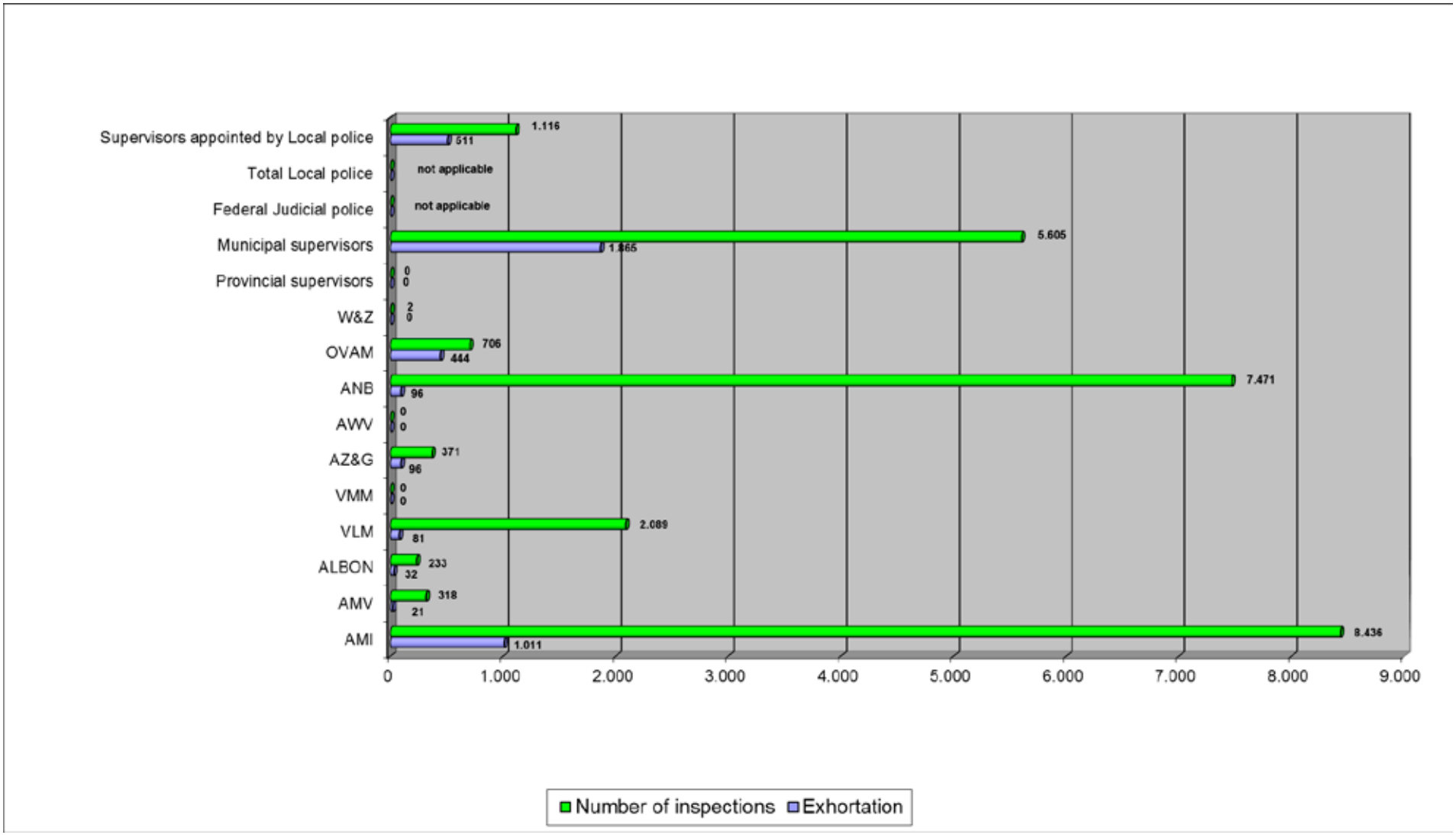
There is a substantial difference between police districts that use the instrument very little, and those that use it frequently to very frequently. The police districts that hardly ever use the instrument 'Recommendation' can be found in the category with a population between 25,000 and 29,999. Only 2.26% of the inspections performed resulted in a Recommendation being made. On the other hand, a Recommendation was recorded in 1 out of 2 environmental enforcement inspections performed by supervisors appointed by a police district with 75,000 to 100,000 inhabitants. For police districts with more than 100,000 inhabitants, between 50,000 and 74,999 inhabitants and between 0 and 24,999 inhabitants, a share of the instrument 'Recommendation' of respectively 14.63%, 19.75% and 25.00% can be observed. Based on these differences it is very hard to identify a possible cause of this. More

clarity may be obtained in the final conclusion of this chapter, in which the mix of instruments will be discussed for the individual enforcement actors.

3.3 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 criminal offence, they may exhort the suspected offender and any other parties involved to take the necessary measures to end this environmental infringement or environmental criminal offence, partly or entirely reverse its consequences, or prevent its repetition.'*

The graph below shows the figures relating to the use of the instrument 'Exhortation' by the different enforcement actors.



Graph 25) Share of the use of the instrument 'Exhortation'

Where environmental health regulations are concerned, it can be said that the enforcement actors, both at the regional and at the local level, are familiar to very familiar with the use of the Exhortation as an enforcement instrument. For ALBON, AMV and the Agency for Care and Health, this is in line with the conclusions that can be formulated based on the discussion of the use of the official report as an enforcement instrument in Chapter 3.5. Moreover, from that chapter it is clear that local police supervisors very often use the official report as an enforcement instrument. Nonetheless, the data above illustrate that Exhortations are also used frequently as an enforcement instrument, in addition to the official report. This would be the only legal way to proceed, given that article 29 of the code of criminal procedure applies here as well. When an Exhortation is made following an identified offence, a breach of the applicable legislation has already taken place, and the supervisor is therefore under the obligation to draw up an official report, in addition to the choice of the instrument 'Exhortation'.

In order to remedy shortcomings found during inspections among burner engineers, the Environmental Licences Division made frequent use of the previously mentioned 'soft' instruments, such as the Recommendation and the Exhortation, instead of immediately taking repressive action.

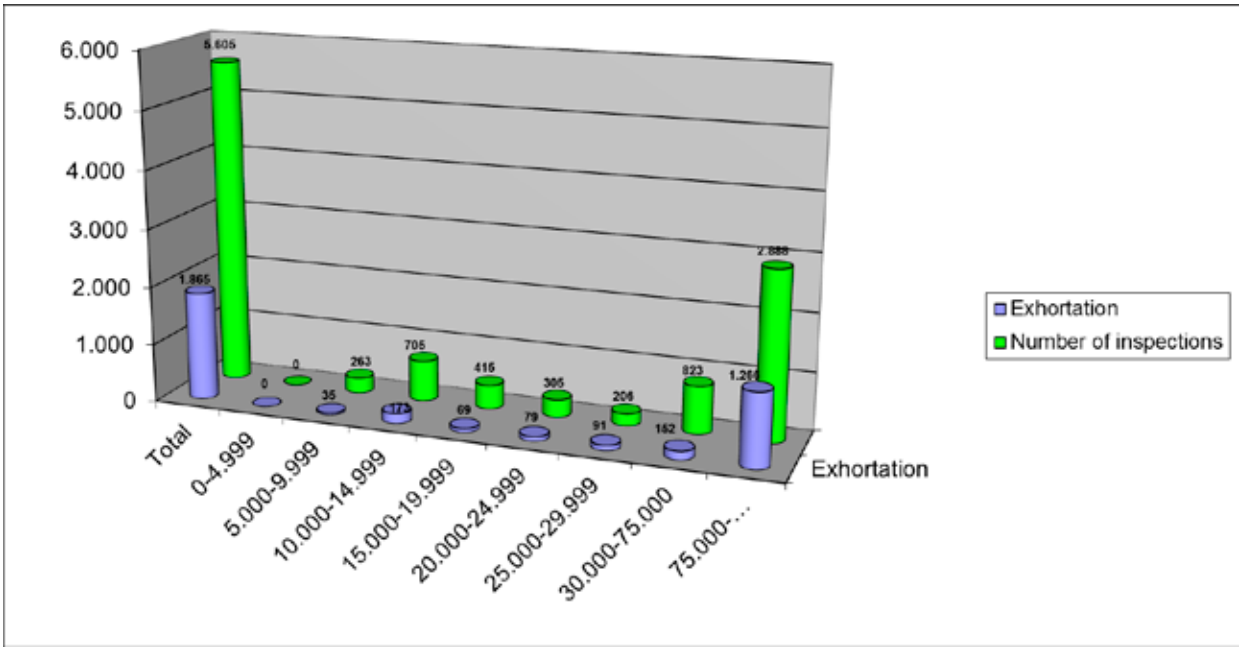
ANB formulated 96 Exhortations in the framework of 7,471 environmental enforcement inspections. The reasons for this limited use are:

- The Exhortation is a new enforcement instrument for ANB, which is why – especially in this initial stage – this instrument is used with some hesitation. On the other hand, for historical reasons the use of the official report is deeply rooted in the methods of ANB;
- ANB was only given the possibility to use this enforcement instrument from the second half of 2009 onwards, because the nature protection legislation could only be enforced according to the rules laid down by the Environmental Enforcement Decree from 25 June 2009 onwards.

At the end of the chapter in which the individual enforcement instruments are evaluated it will probably become clear whether the failure to use the Exhortation as an enforcement instrument is a consequence of a more intensive use of other enforcement instruments. If this trend continues in the future as well, a study can be considered of whether the objectives set are the cause of this, or a lack of knowledge or expertise, or the nature of the identified offences...

3.3.1 Share of the use of the instrument 'Exhortation' by municipal supervisors

33.27% of the environmental enforcement inspections carried out by municipal supervisors resulted in an Exhortation being made. From the graph below it can be observed that there are remarkable differences between the various categories of municipalities.



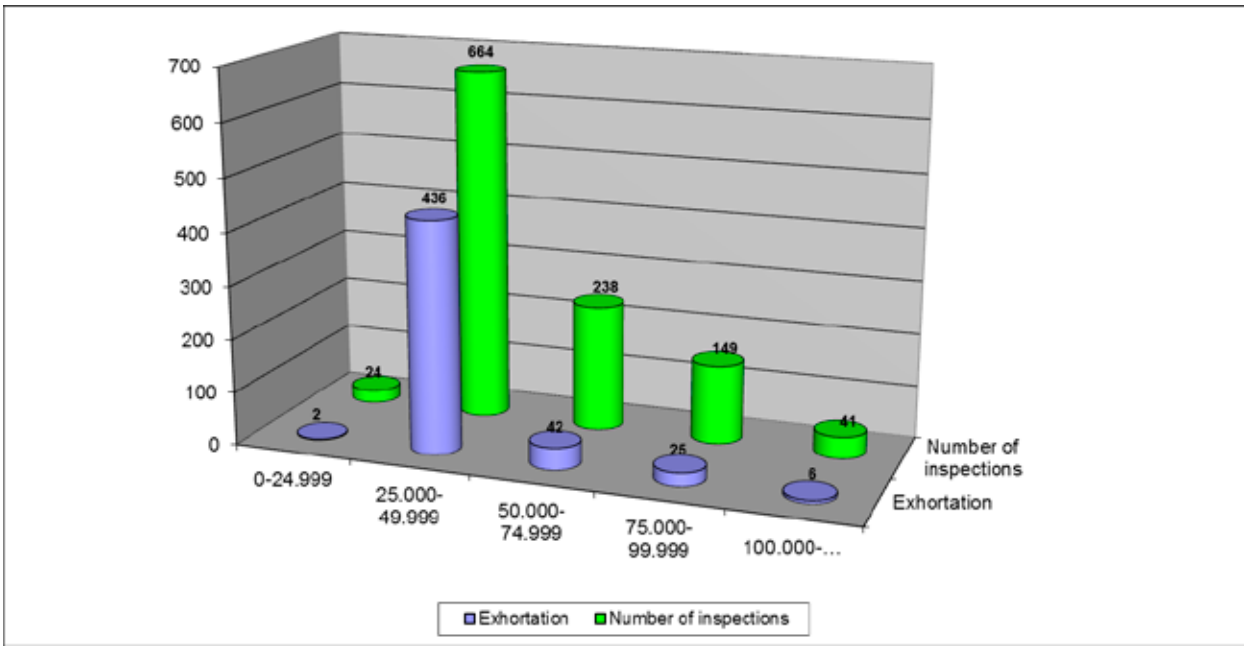
Graph 26) Share of the use of the instrument 'Exhortation' by municipal supervisors (according to population)

Municipalities with a population of 25,000-29,999 and cities and municipalities with more than 75,000 inhabitants are very familiar with exhorting suspected offenders to take the necessary measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition. In 91 of the 206 inspections (i.e. 44.17%) and 1,266 of the 2,888 inspections (i.e. 43.83%), respectively, carried out by supervisors of these cities and municipalities, the suspected offender was exhorted to take such measures.

In the categories with 10,000-14,999 and with 20,000-24,999 inhabitants as well, in approximately 1 in 4 environmental enforcement inspections an Exhortation was made. In the categories that have not yet been mentioned, the use of the instrument is similar to the average for the Flemish cities and municipalities, namely 13.31% for municipalities with 5,000-9,999 inhabitants, 16.63% for municipalities with 15,000-19,999 inhabitants and 18.47% for municipalities with 30,000-74,999 inhabitants.

3.3.2 Share of the use of the instrument 'Exhortation' by local police supervisors

As we have already indicated above, local police supervisors very often use the official report as an enforcement instrument in addition to the 'Recommendation' and the 'Exhortation'. The graph below shows the differences in the use of the instrument 'Exhortation' in the different police districts.



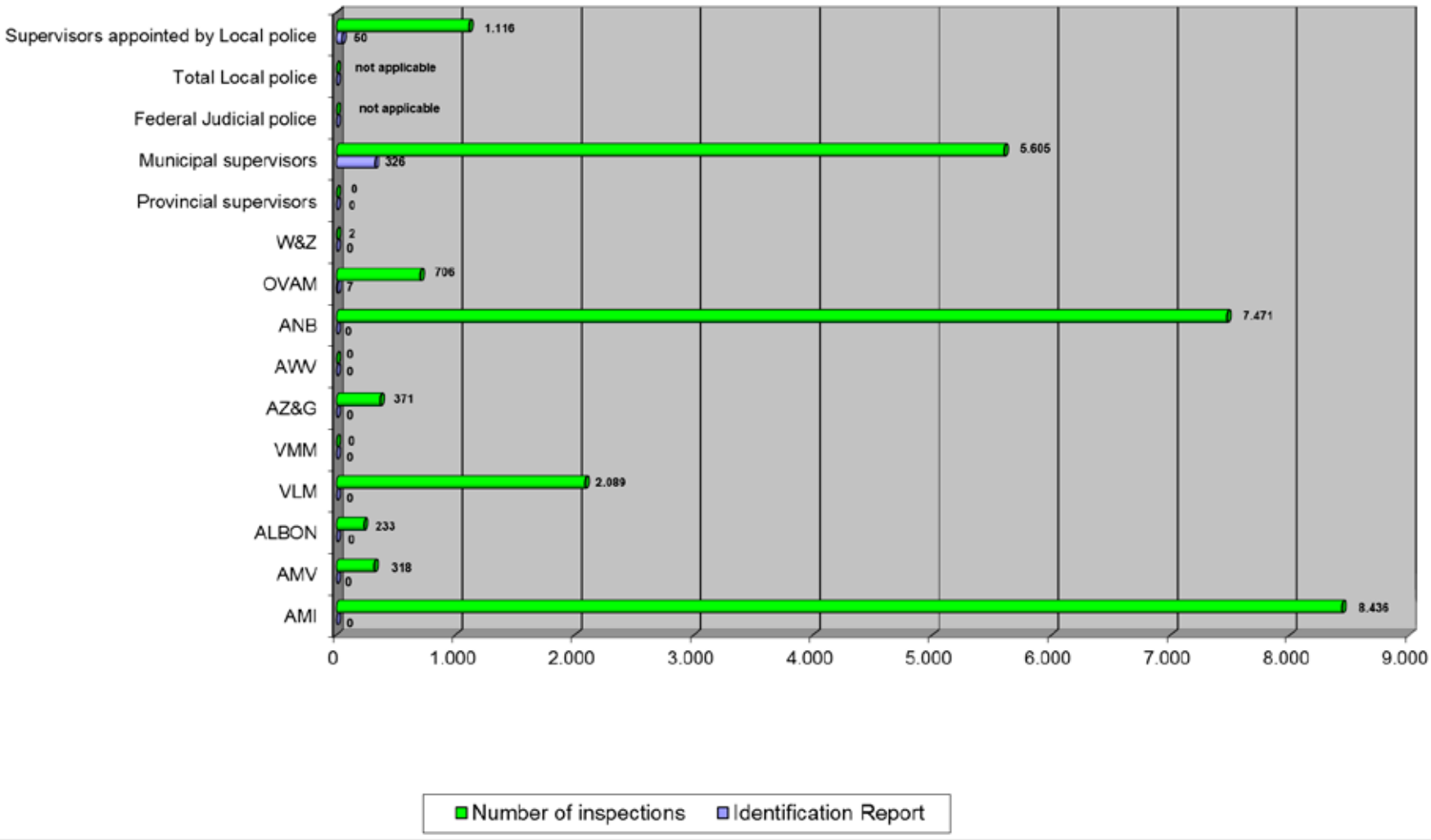
Graph 27) *Share of the use of the instrument 'Exhortation' by local police supervisors (according to police district population)*

For the average Flemish police district, 45.79% of the environmental enforcement inspections carried out resulted in an Exhortation being made. Police districts with a population between 25,000 and 50,000 exceeded this Flemish average. What is more, in as many as 65.66% of the inspections carried out by them an Exhortation was issued. For police districts with more than 50,000 inhabitants, shares are very similar, varying between 14.63% and 17.65%. The smallest police districts used the Exhortation least often as an enforcement instrument. Based on the questionnaires, 2 Exhortations in the framework of 24 environmental enforcement inspections could be recorded.

3.4 EVALUATION OF THE INSTRUMENT 'IDENTIFICATION REPORT'

The 'identification report' is a new enforcement instrument which was set up with the coming into force of the Environmental Enforcement Decree on 1 May 2009. One of the most important changes in the new Environmental Enforcement Decree is the decriminalisation of certain administrative infringements of environmental regulations with a limited effect on the environment, according to six cumulative criteria to be met by such infringements. This resulted in a list, included in the Act 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 graph below provides an overview of identification reports drawn up by the individual enforcement actors compared to the number of environmental enforcement inspections carried out by them.



Graph 28) *Share of the use of the instrument 'identification report'*

From the figures above it can be seen very clearly that the identification report is a new enforcement instrument. Very few enforcement actors seem to be familiar with or use identification reports. The only regional enforcement actor that reported having drawn up identification reports in the period from 1 May 2009 to 31 December 2009 is OVAM. For 706 performed inspections 7 identification reports were drawn up. The exclusive administrative fines that can be imposed following these identification reports will be discussed in Chapter 4.2.1. An exception should be made for the Flemish Land Agency and the Agency for Nature and Forests. In the limitative list of appendices to the Act of 12 December 2008, no environmental infringements relating to the Decree 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 relating to these matters could be drawn up.

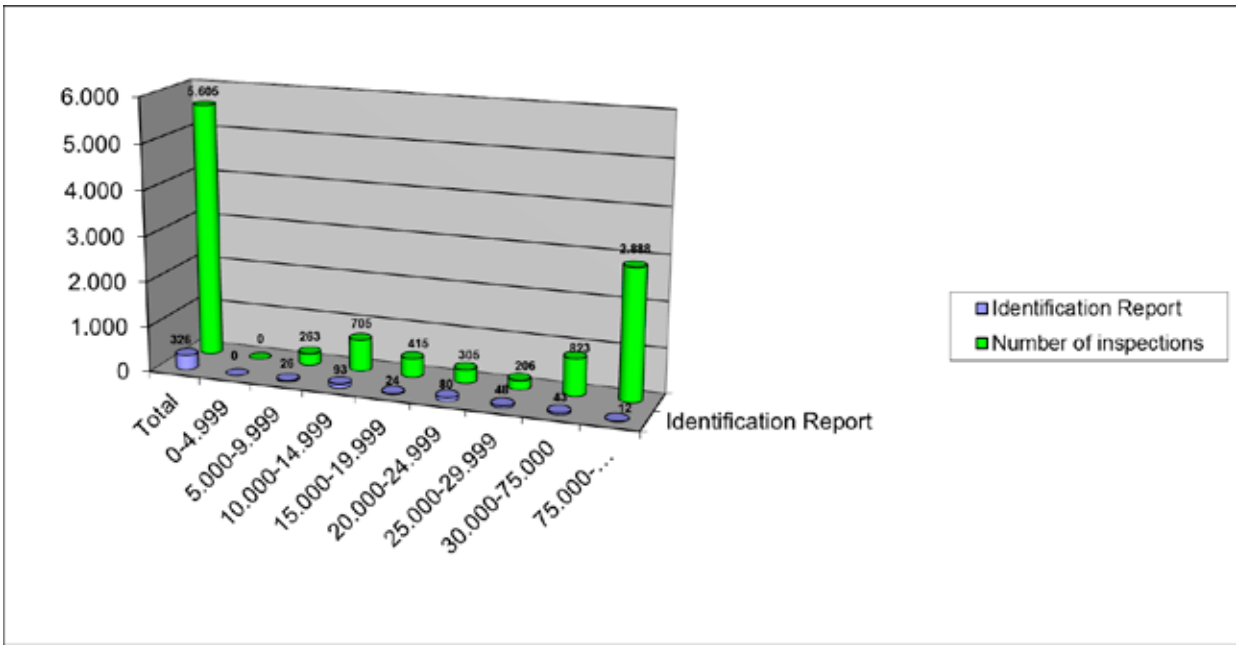
What is remarkable is the figure that was obtained by questioning the municipal supervisors. Initially, they reported that 1,361 identification reports had been drawn up in the framework of 5,605 inspections, i.e. 24%. However, 1,035 of these identification reports turned out to have been reported by a single municipality. This municipality then explained to the permanent secretariat of the VHRM that these were not identification reports as referred to in the Environmental Enforcement Decree, but internal inspection reports on environmental enforcement inspections performed. From this error it can be concluded that supervisors are still 'struggling' with the terminology and the provisions of the Environmental Enforcement Decree, and that the correctness and hence the interpretation of the figures provided must be questioned. The impression is that these do not always refer to formal 'identification reports' as referred to in DABM, but rather to internal inspection reports. As we have already mentioned before, one of the challenges for the VHRM for the next environmental enforcement reports is to remedy this.

Even after this correction, the municipalities reported having drawn up 326 identification reports during 5,605 environmental enforcement inspections. Especially the fact that AMMC received only 1 identification report drawn up by a municipal supervisor over the given period seems problematic. The reason for this is probably the fact that what municipalities call 'identification reports' are really internal reports, and not 'identification reports' as referred to in the Environmental Enforcement Decree. This realisation reinforces the conclusion that the terminology of the Environmental Enforcement Decree has been insufficiently integrated into municipal supervisors' daily activities. Another possible explanation could be that an identification report was drawn up, but that it was not submitted to AMMC. Taking into account the low numbers of identification reports, also among the Flemish administrations, this hypothesis (frequent identifications, but rarely submitted) seems unlikely.

With respect to identification reports drawn up by local police supervisors the same problem of their submission to the Environmental Enforcement, Environmental Damage and Crisis Management Division arises. For a further discussion and analysis of this problem we refer to Chapter 4.2.1. Although the official report is an especially dominant enforcement instrument within the local police (see Chapter 3.5), 50 identification reports were drawn up by these supervisors during the 2009 study period. This means that 4% of all inspections resulted in an identification report being drawn up. However, it is too early to draw conclusions on whether specific actions are necessary to inform local police supervisors about the use of this new enforcement instrument. The figures of the Environmental Enforcement Report 2010 may bring more clarity on this. In the meantime, the VHRM working groups are diligently working on the exchange of information, expertise and experiences in order to be able to find solutions to possible problems.

3.4.1 Share of the use of the instrument 'identification report' by municipal supervisors

After correction of the initial figures, the municipal supervisors reported having drawn up 326 identification reports in the framework of 5,605 environmental enforcement inspections carried out between 1 May 2009 and 31 December 2009. Based on the figures below, it will be attempted to determine the position of the different municipalities with respect to this average for Flemish cities and municipalities.



Graph 29) *Share of the use of the instrument 'identification report' by municipal supervisors (according to population)*

When it comes to the use of the identification report, two categories of municipalities are around the average for Flemish cities and municipalities: municipalities with 15,000-19,999 inhabitants and those 30,000-74,999 inhabitants reported respective shares for this instrument of 5,78% and 5,22%.

Municipalities with more than 75,000 inhabitants – concretely, large cities – seem to be least familiar with the identification report as an enforcement instrument, or use it less. Supervisors appointed by these large cities only drew up 12 identification reports following identified environmental infringements during 2,888 environmental enforcement inspections. Taking into account the figures in Chapter 3.1.1 we can say that for this category the reason for the small share of the identification report is not related to a lack of action taken following identified breaches.

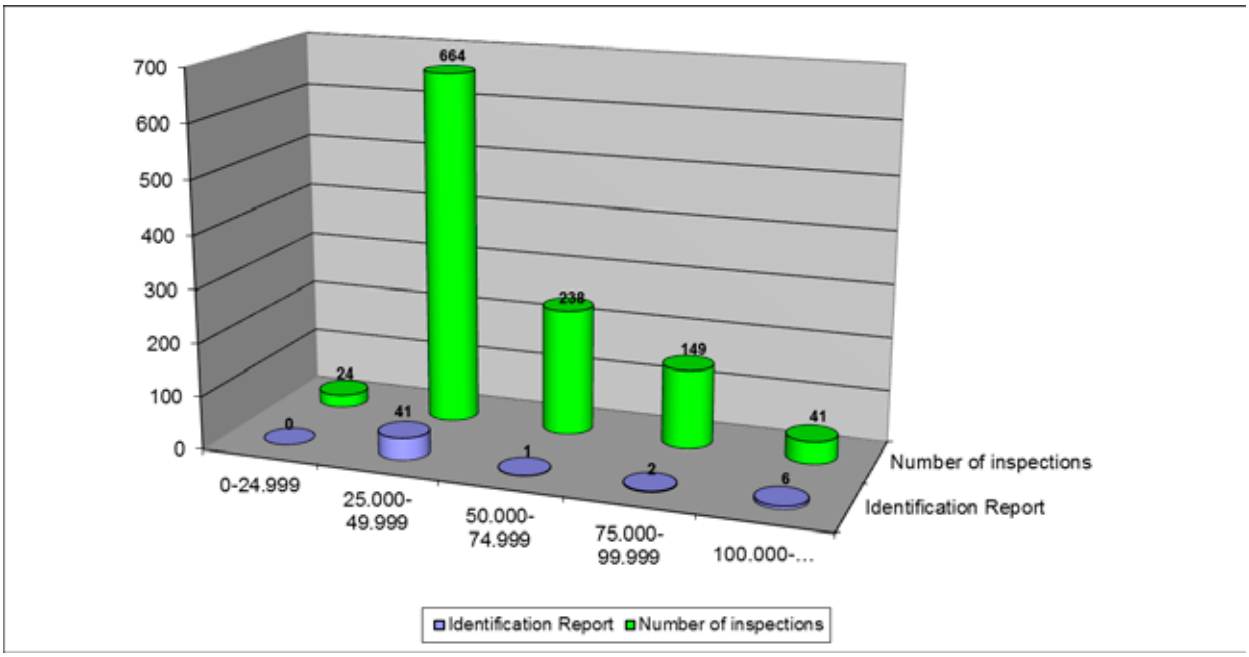
In municipalities belonging to the categories with 5,000-9,999 and 10,000-14,999 inhabitants the identification report is used in 9.89% and 13.19% of inspections performed, respectively. Municipalities with populations between 20,000-24,999 and 25,000-29,999 drew up an identification report in 1 in 4 environmental enforcement inspections (26.23% and 23.30%, respectively).

Taking into account the figures in Chapter 4.2.1, the abovementioned figures should be questioned. In fact, only one of the identification reports drawn up by municipal supervisors was reported to have been submitted to the Environmental Enforcement, Environmental Damage and Crisis Management Division with a view to the imposition of an exclusive administrative fine. A likely explanation for this huge difference is the fact that supervisors are either insufficiently familiar with the procedures for submission of identification reports to the regional body, or have insufficient knowledge of the terminology of the Environmental Enforcement Decree and, as a result, provided erroneous figures.

3.4.2 Share of the use of the instrument 'identification report' by local police supervisors

For supervisors appointed by the local police the same problem arises: not all identification reports that are drawn up are submitted to the regional body (which is, in fact, a legal requirement). Between 1 May 2009 and 31 December 2009, the Environmental Enforcement, Environmental Damage and Crisis Management Division received only 12 of the 50 reports drawn up with a view to the imposition of an exclusive administrative fine. Consequently, the explanation here is probably similar to that for the municipal supervisors, i.e. insufficient knowledge of the terminology and/or procedures of the Environmental Enforcement Decree.

The graph below shows the differences in the use of the 'identification report' between the various police districts.



Graph 30) *Share of the use of the instrument 'identification report' by local police supervisors (according to police district population)*

The identification report is used least frequently by supervisors of police districts with a population between 0 and 24,999 inhabitants. They did not reported drawing up any identification reports in the framework of 24 performed inspections.

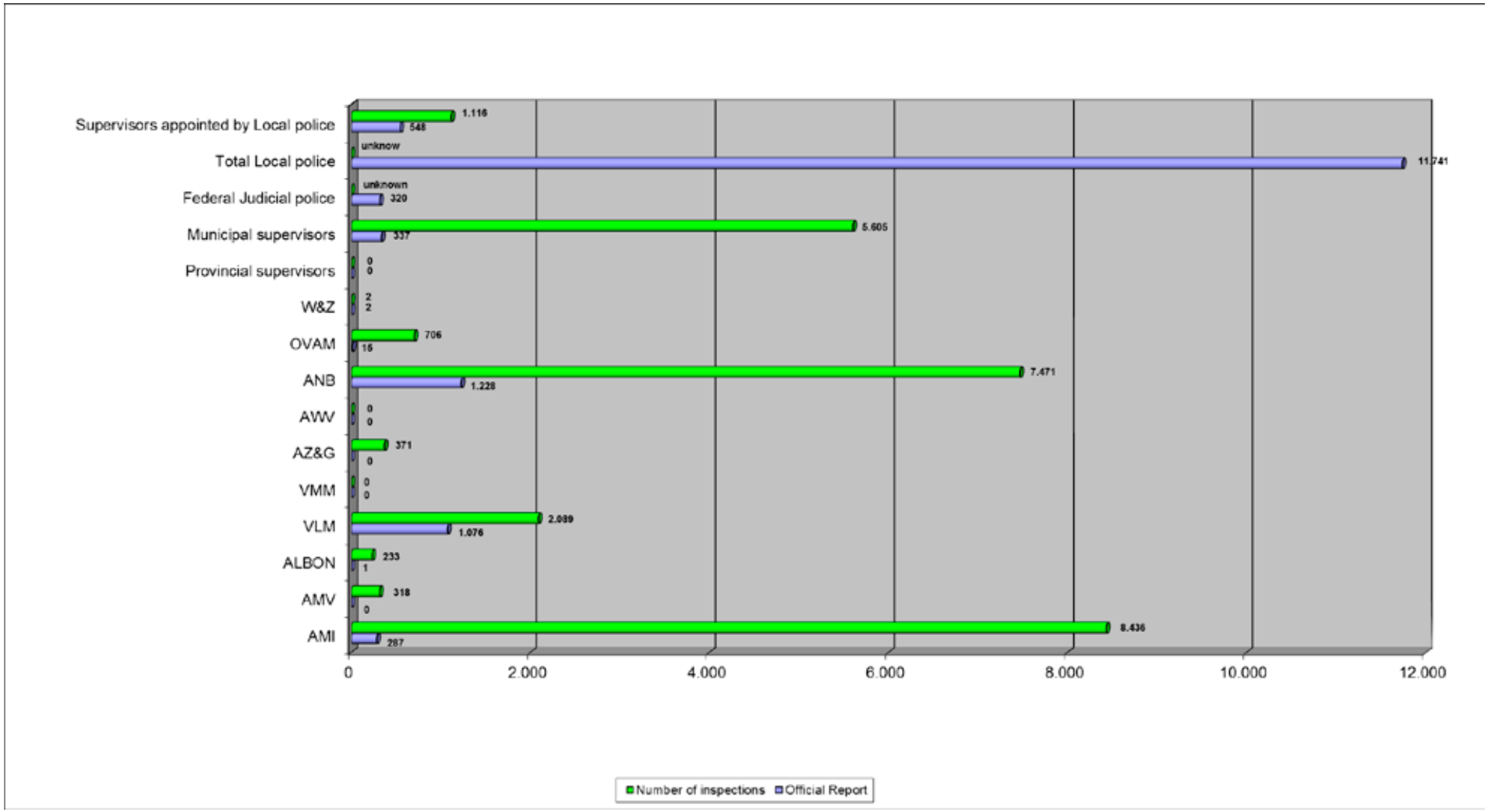
Police districts with populations between 50,000 and 99,999 are not familiar yet either with drawing up identification reports. In the police districts with 50,000-74,999 inhabitants, these supervisors drew up 1 identification report for 238 environmental enforcement inspections. In police districts with 75,000-99,999 inhabitants this proportion is 2 in 149.

Police districts with 25,000-49,999 inhabitants and police districts with more than 100,000 inhabitants do seem to be becoming familiar with the incorporation of the identification report into their set of enforcement instruments. Since the coming into force of the Environmental Enforcement Decree 6.17% and 14.63% of inspections carried out by them, respectively, resulted in the reporting of an environmental infringement using an identification report.

Here it should be recalled that there is serious doubt as to whether the number of 'identification reports' mentioned refers to merely internal inspection reports, or 'identification reports' in the sense of DABM. The results must therefore be interpreted with the necessary caution.

3.5 EVALUATION OF THE INSTRUMENT 'OFFICIAL REPORT TO THE PUBLIC PROSECUTOR'

While environmental infringements can be identified via an identification report, supervisors have to use official reports to report environmental criminal offences to the public prosecutor. The graph below provides an overview of the official reports drawn up per enforcement actor.



Graph 31) *Share of the use of the instrument 'official report'*

Before the use of the instrument 'official report to the public prosecutor' can be discussed, an important note must be made about the figures above. During the processing of the data, it turned out that the individual enforcement actors made different interpretations of the question about the number of official reports drawn up by them during the period from 1 May 2009 to 31 December 2009. Concretely, the figures provided by the Agency for Nature and Forests included both 878 initial official reports and 350 follow-up official reports[36], whereas the figures from the Environmental Inspectorate Division of the LNE Department and the local police only referred to initial official reports, as they regard follow-up official reports as additional information for the public prosecutor about previously drawn up official reports. The Flemish Land Agency mentions 1,076 official reports. However, this number includes 101 official reports which were submitted to the public prosecutor with a view to a criminal procedure as well as 975 inspection reports which were drawn up by the Flemish Land Agency in the framework of their own administrative sanctioning in conformity with the Decree on manure. For other enforcement actors it is unclear whether all the figures provided include only initial official reports, or initial and follow-up official reports. In view of the foregoing, it will therefore be an important challenge for the VHRM, and an improvement for future environmental enforcement reports, to find an adequate solution to this.

As a result of these different interpretations there are significant variations that make comparison between the figures obtained very difficult. Aside from this important observation, we will nevertheless try to evaluate the use of the 'official report' as an enforcement instrument.

It should also be stated clearly that no normative evaluation can be made based on the number of official reports drawn up. The reason for this is that official reports drawn up, say, by the local police, and official reports drawn up by the Environmental Inspectorate Division refer to different kinds of infringements, for instance where the complexity of both the content and the legal nature are concerned[37].

Firstly, the figures show the use of the instrument 'official report' by Waterways and Sea Canal. In both environmental enforcement inspections they carried out between 1 May 2009 and 31 December 2009 an official report was drawn up. The official report also seems to be an instrument that is strongly embedded in the activities of the Flemish Land Agency, on the one hand, and the local police, on the other. According to the data provided, these enforcement actors recorded non-conformities with the applicable legislation in an official report in approximately 1 in 2 inspections. It is important to note that in the case of the Flemish Land Agency 975 of the 1,076 official reports were in fact inspection reports referring to cases where they can apply their own administrative sanctions in accordance with the provisions of the Decree on manure. However, leaving these inspection reports aside, VLM ends up in the second category, with the percentage of official reports drawn up amounting to 5% of all inspections performed.

Besides VLM, the second category comprises regional enforcement actors AMI, ANB, OVAM and municipal supervisors, who drew up an official report in, respectively, 3%, 16% (13% if only initial official reports are counted), 2% and 6% of the inspections. A plausible explanation for the big difference in the number of official reports drawn up by these enforcement actors and those drawn up by local police supervisors can probably be found in the fact that the use of the official report is strongly embedded into local police methods, so that these supervisors are quicker to fall back on this instrument instead of using the entire range of available enforcement instruments. If the environmental enforcement reports of the next years confirm this trend, specific actions may be relevant and desirable. Another possible explanation is the fact that before an official report is drawn up, first a preliminary process must be completed. Given that the

[36] The number of official reports drawn up by ANB refers to the whole of 2009 and hence not only to the study period.

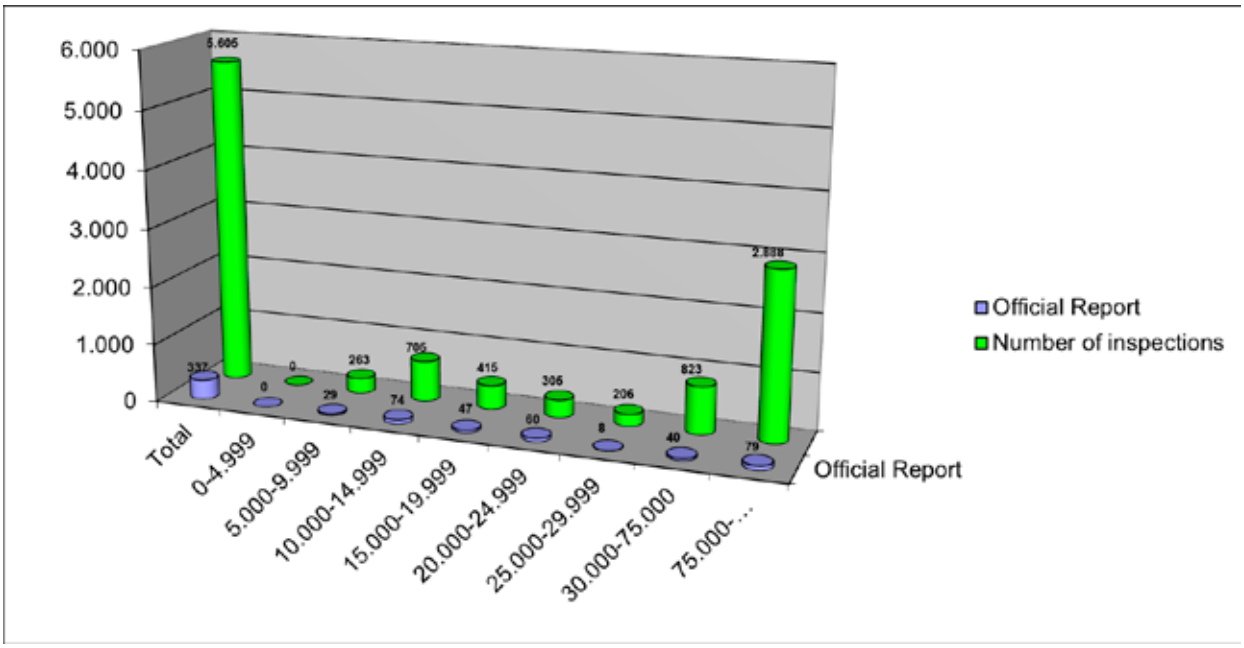
[37] In the same context it can be mentioned that the initially drawn up official reports of the federal judicial police are usually only the first step in highly complicated cases in which dozens of follow-up official reports are drawn up.

official report is one of the last steps in the enforcement process, other enforcement instruments are used first, before the final official report is drawn up[38].

Finally, we will pay attention in the evaluation of the official report as an enforcement instrument to supervisors who, despite the number of inspections they carried out, drew up no or very few official reports. The Environmental Licences Division of the LNE Department did not draw up any official reports in the framework of 318 performed inspections. AMV reported that it tries to use 'soft' instruments as much as possible, such as the Recommendation and the Exhortation, instead of immediately taking repressive action. A similar situation was reported by the Agency for Care and Health (0 official reports for 371 performed inspections). The Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department drew up 1 official report in the given period, whereas it carried out 233 environmental enforcement inspections. However, when we take a closer look at the figures for the enforcement instruments referring to these enforcement actors, we can observe that the identified infringements of the applicable legislation are usually 'regularised' by means of the enforcement instrument 'Exhortation', and in a few cases also via safety and/or administrative measures. Hence, to these actors, the instrument 'official report' is probably only an instrument for curative action in case an operator does not take appropriate action following an anomaly.

3.5.1 Share of the use of the instrument 'official report' by municipal supervisors

For the 2009 study period supervisors appointed by the average city of municipality reported drawing up an official report in 6.01% of the inspections carried out. In the graph below the use of the official report is illustrated for the different categories of municipalities.



Graph 32) *Share of the use of the instrument 'official report' by municipal supervisors (according to population)*

In the figures above an important trend can be observed for two large groups of cities and municipalities. When we look at the municipalities with a maximum of 25,000 inhabitants, we can conclude that the supervisors appointed by these municipalities, with the exception of the very small municipalities with

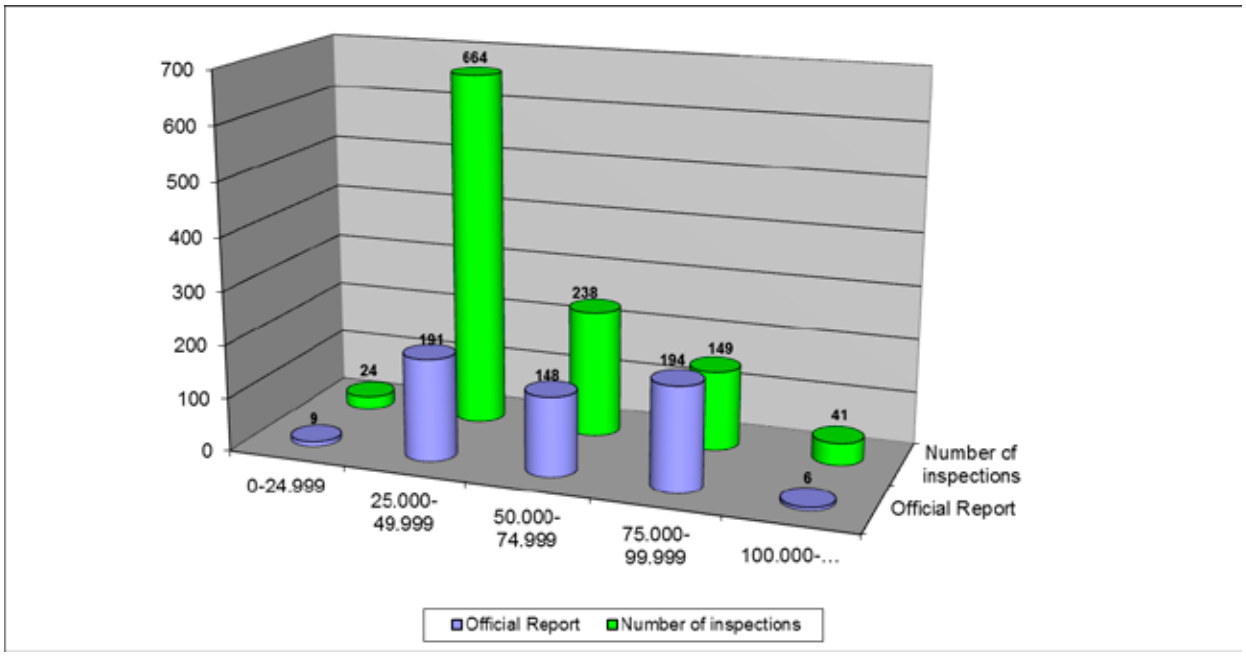
[38] In cases where an environmental offence is identified during an inspection, this does create an area of tension with Article 29 of the Code of Criminal Procedure, under which the drawing up of an official report is mandatory.

less than 5,000 inhabitants, are perfectly familiar with and frequently use the official report as an enforcement instrument. For these categories the use of the official report varied between 10.50% and 19.67% of inspections carried out.

Contrary to the general assumption that larger municipalities and cities are more familiar with and have more expertise when it comes to the use of enforcement instruments, the share of official reports drawn up by municipalities with more than 25,000 inhabitants is significantly lower than for municipalities with less than 25,000 inhabitants. For municipalities with 25,000-29,999 inhabitants the share is 3.88% of inspections carried out, for cities and municipalities with 30,000-74,999 inhabitants this is 4.86%, and for large cities with more than 75,000 the share is only 2.74%. Once again, the question can be asked whether in these large cities the environment is a less important issue, and the emphasis is on other forms of nuisance. Before studying this further, we will wait to see whether this trend can be observed in the Environmental Enforcement Report 2010 as well.

3.5.2 Share of the use of the instrument 'official report' by local police supervisors

As for the other enforcement instruments, the graph below shows the use of the official report by supervisors appointed by the local police per type of police district.



Graph 33) *Share of the use of the instrument 'official report' by local police supervisors (according to police district population)*

In the general discussion of the official report as an enforcement instrument it was already concluded that the official report is strongly embedded in local police methods. In an average Flemish police district, approximately 1 in 2 inspections resulted in an official report being drawn up. Nevertheless, there are important differences between the police districts, and various remarkable figures deserve attention.

The most remarkable figure can be found for police districts in the category of 75,000-99,999 inhabitants. These districts drew up no less than 194 official reports during 149 environmental enforcement inspections. These figures result in a use of the official report that amounts to 130.20% of inspections carried out. Based on the figures from the individual police districts belonging to this category, this large share can be ascribed to 1 police district. In the framework of the 59 inspections carried out by the supervisors appointed by this police district, 149 official reports were drawn up.

Another category of police districts which draw up more official reports than the average Flemish police district is that with 50,000 to 75,000 inhabitants. For these police districts the figures provided added up to 148 official reports for 238 inspections performed, i.e. 62.18%. Police districts with populations between 0 and 24,999 and between 25,000 and 49,999 represent a share of 37.50% and 28.77%,

respectively. As was the case for large cities, large police districts are the ones that draw up the fewest official reports. During 41 environmental enforcement inspections 6 official reports were drawn up for environmental offences. Here as well, it can be studied, if this observation is confirmed in the next environmental enforcement reports, whether the cause of this is related to the fact that large cities and police districts tend to give priority to other forms of environmental nuisance.

3.6 EVALUATION OF THE INSTRUMENT 'ADMINISTRATIVE MEASURES' AND 'APPEALS AGAINST THE IMPOSITION OF ADMINISTRATIVE MEASURES'

For the purposes of this 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 Decree 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 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 withdrawal of, the implementation of, the appeal against and the request for administrative measures. Appeals against the imposition of administrative measures will be discussed in more detail in Chapter 3.6.3.

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

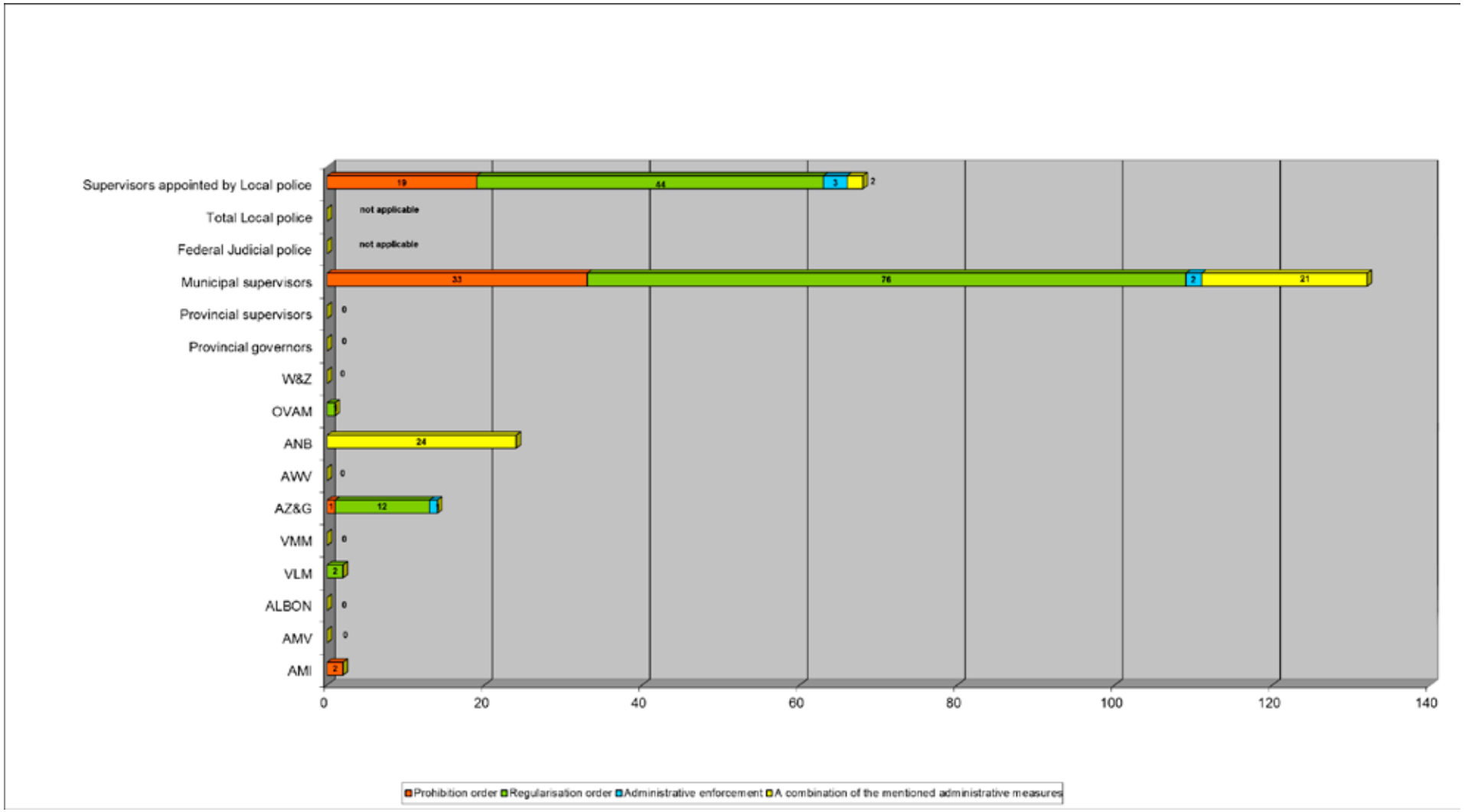
1. an order to the suspected offender to take the necessary measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
2. an order to the suspected offender to end activities, works, or the use of objects;
3. an actual 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;
4. a combination of the measures mentioned in 1°, 2° and 3°.

The 'regularisation order', or the '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', as defined by the Environmental Enforcement Decree, seems to be the most frequently used form. More than half of all administrative measures imposed (55.56%) consisted in such a 'regularisation order'.

The 'prohibition order', defined in the Environmental Enforcement Decree as the 'order to the suspected offender to end activities, works, or the use of objects', and a 'combination of the aforementioned administrative measures' represent a share of 22.63% and 19.34%, respectively, of the administrative measures imposed. The least popular form is 'administrative coercive'. These administrative measures, defined as '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' make up only 2.47% of the total. The scarce use of 'administrative coercive' as an administrative measure can be explained, among other things, by the fact that actions taken by the supervisors involve costs (for instance those of waste removal) and that resources are not always available for this. The fear of damage claims from the sealed businesses, and no or insufficient support from a higher authority could be other explanations.

However, in relation to these figures it should be noted that for ANB no detailed information is available on the nature of the administrative measures imposed. Therefore, for this actor it was assumed in the statistics that the 24 administrative measures were all combinations of the aforementioned administrative

measures. In reality, however, the administrative measures imposed by ANB usually involve stopping works, prohibiting the execution of works and/or imposing remedial measures. For instance, in various cases where protected shelterbelts had been cleared, their replanting was ordered.



Graph 34) *Nature of the administrative measures imposed*

Compared to the number of environmental enforcement inspections performed, local supervisors most often used 'administrative measures' as an enforcement instrument. Among supervisors appointed by the local police 68 of the 1,116 inspections carried out (= 6.09%) resulted in the imposition of administrative measures. For municipal supervisors this share was 2.35%.

Among regional supervisors 'administrative measures' were used as an enforcement instrument by AMI, VLM, the Agency for Care and Health, ANB and OVAM. The instrument was most frequently used by the Agency for Care and Health, where 3.77% of inspections carried out resulted in the imposition of administrative measures. The 'regularisation order' was the most frequently used form for the Agency for Care and Health as well. Among the other actors, the use of administrative measures was rather limited. AMI imposed 2 administrative measures for 8,436 performed inspections, for ALBON this was 2 administrative measures for 2,089 inspections, for ANB 24 for 7,471 inspections, and for OVAM 1 for 706 inspections.

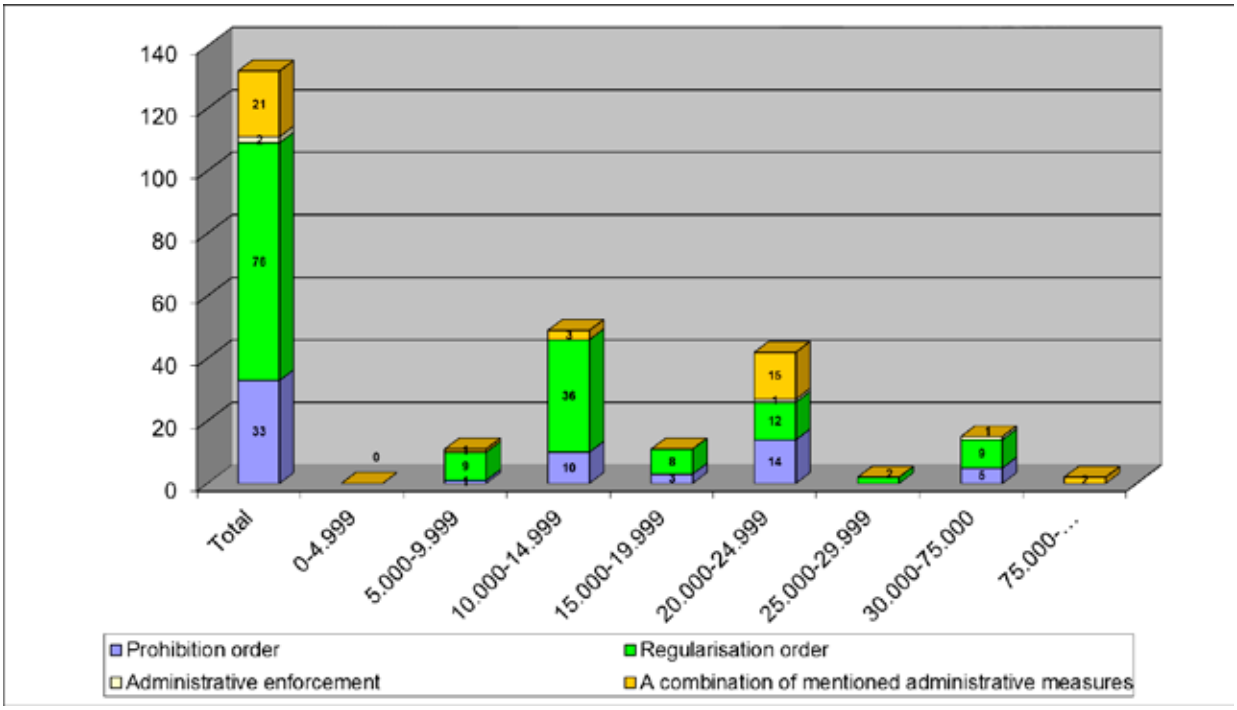
A definitive explanation for the differences in the use of administrative measures as an enforcement instrument could not be found. The final conclusion on the use of the entire set of enforcement instruments may bring clarity on this aspect. To impose an administrative measure, an official report or an identification report are required. However, some individual actors reported having imposed measures (Graph 34), whereas their supervisors did not make any identifications (Graph 31). This raises questions as to the correctness of the figures provided, or supervisors' knowledge of the procedures of the Environmental Enforcement Decree.

In the Environmental Enforcement Decree the 5 provincial governors were given the competence to impose administrative measures and safety measures. Even so, in the questionnaire, none of the provincial governors reported having imposed administrative measures during the 2009 study period. A possible reason for this could be the fact that provincial governors have neither the expertise nor the equipment to put this competence into practice. There is also a possibility that the reason why this instrument is not used is that few know about this competence. Nevertheless, in the questionnaires received from the provincial governors it was reported that the provincial governor of East Flanders received 2, and the provincial governor of Antwerp 1 request for the imposition of administrative measures. Hence, it seems appropriate to follow this up further, both in the framework of the VHRM's activities and in the next environmental enforcement reports.

3.6.1 Nature and number of administrative measures imposed by municipal supervisors

Administrative measures seem to be used especially by local supervisors. The graph below illustrates the use by municipal supervisors according to the nature and number of administrative measures imposed per category.

When we look at the average for all Flemish municipalities, but also in most categories, the 'regularisation order' is the form that is most frequently used. Only in the category with 20,000 to 25,000 inhabitants this general finding does not apply. In this category of municipalities the largest number of administrative measures applied were a 'combination of the aforementioned administrative measures' (applied in 15 of the 305 inspections performed), followed by the 'prohibition order', which was applied in 14 of the 305 inspections performed. In this category, the 'regularisation order' was applied in 12 of the 305 inspections performed, and hence only came third, with a share of 28.57%.



Graph 35) Nature of the administrative measures imposed by municipal supervisors (according to population)

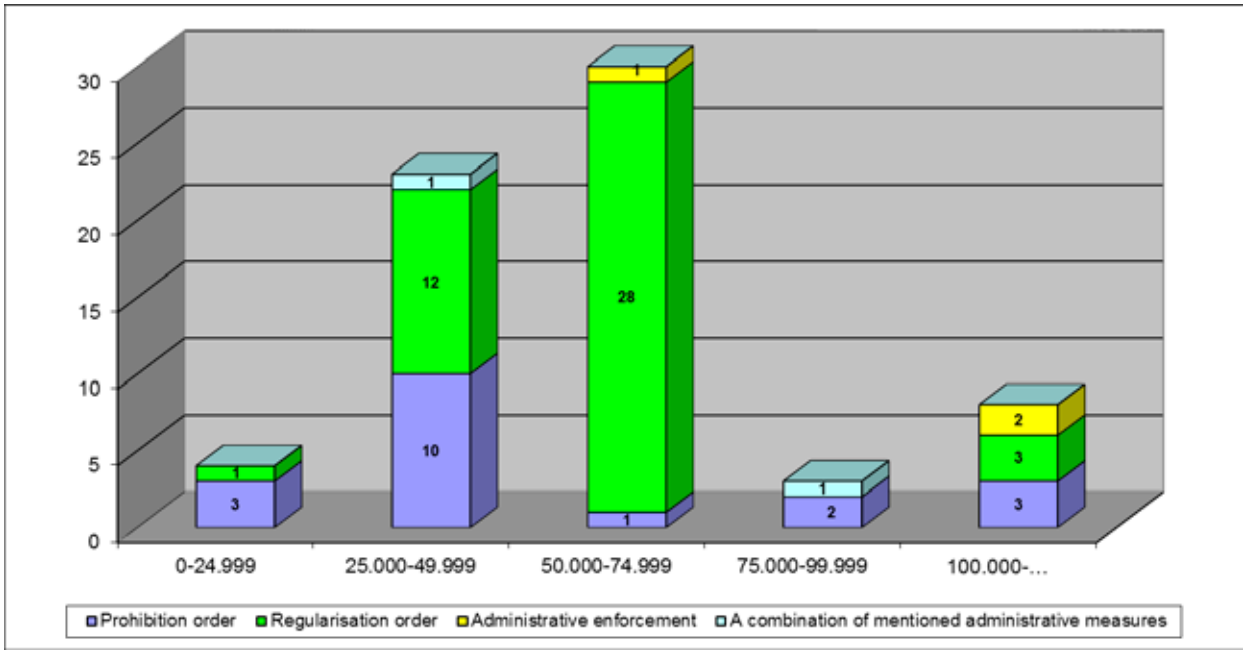
3 categories of municipalities impose significantly more administrative measures than the Flemish average of 2.35% of all environmental enforcement inspections performed. The municipalities with populations between 20,000 and 25,000 inhabitants represented a share of 13.77%, which means that administrative measures were imposed for 42 of the 305 inspections performed. The municipalities with 5,000-9,999 and 10,000-14,999 inhabitants also exceeded the average, with respective shares of 4.18% and 6.95%.

The municipalities in the category with 15,000-19,999 inhabitants were close to the Flemish average. They imposed 11 administrative measures as a result of 415 inspections (= 2.65%). Especially larger municipalities and cities refrained from using administrative measures as an enforcement instrument. The question arises which reasons exist for this, as one would expect large cities and municipalities to be most familiar with administrative measures. Supervisors in the municipalities with 25,000-29,999, 30,000-74,999 and more than 75,000 inhabitants only imposed administrative measures in, respectively, 2 of the 206 inspections carried out, 14 of the 283 inspections carried out and 2 of the 2,888 inspections carried out.

3.6.2 Nature and number of administrative measures imposed by local police supervisors

Similarly to the evaluation above, we will look at the nature and number of administrative measures imposed by local police supervisors.

It was found that among these supervisors as well, the 'regularisation order' was the most frequently used enforcement instrument. This form represents 64.70% of all administrative measures imposed by local police supervisors. For the 'prohibition order', 'administrative coercive' and the 'combination of the aforementioned administrative measures', these percentages are 27.94%, 4.41% and 2.94%, respectively.



Graph 36) *Nature of the administrative measures imposed by local police supervisors (according to police district population)*

The average Flemish police district reports administrative measures for 6.09% of the environmental enforcement inspections carried out. What is remarkable is that, in comparison with the number of inspections carried out, in police districts with populations of 0-24,999 and more than 100,000 this share is as high as, respectively, 16.67% and 19.51%. In other words, nearly 1 in 5 inspections carried out in large police districts results in the imposition of administrative measures. In the category of police districts with 50,000-74,999 inhabitants, the share – 30 administrative measures for 238 inspections – is significantly above the Flemish average.

On the other end of the spectrum are the police districts with 25,000-49,999 and 75,000-99,999 inhabitants, where administrative measures are imposed significantly less frequently. For police districts in the first category this share is 3.46% of inspections performed, for those in the second category it is only 0.20%.

3.6.3 Appeals against the imposition of administrative measures

3.6.3.1 Number of appeals submitted against the imposition of administrative measures and decisions taken

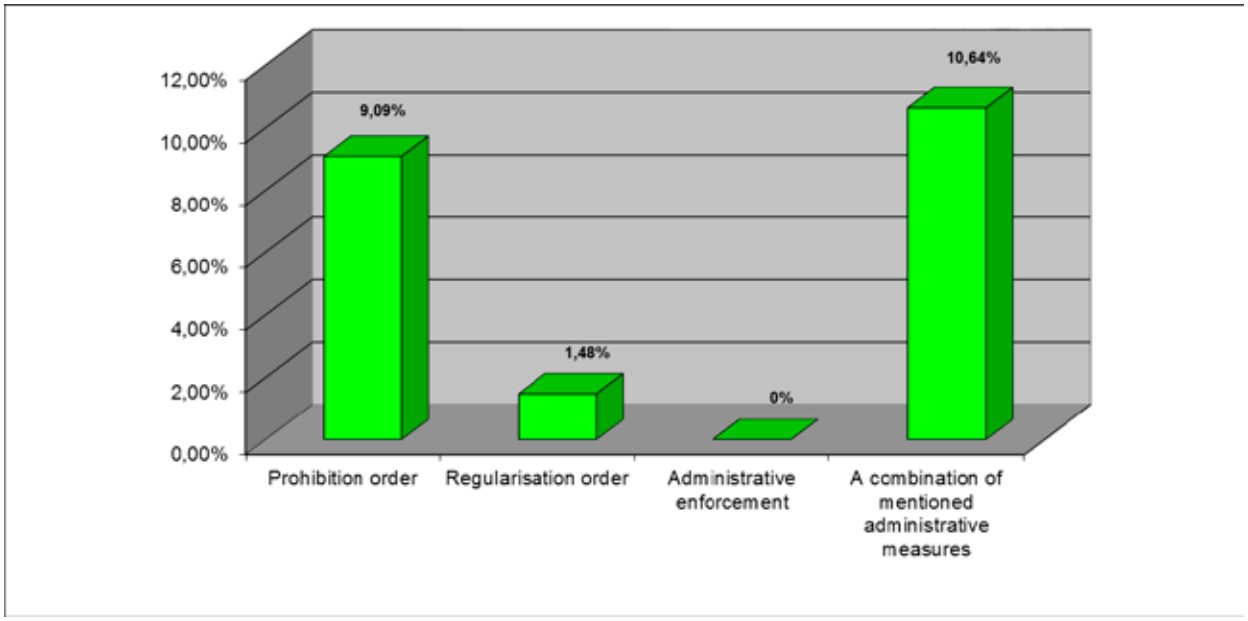
Article 16.4.17 of DABM stipulates that the suspected offender may lodge an appeal against the imposition of administrative measures to the Minister. The appeal must be submitted to the Minister within a period of fourteen days from the notification of the decision containing administrative measures,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

In 2009 – from the coming into force of the Environmental Enforcement Decree on 1 May 2009 onwards – 13 appeals were submitted to the Minister against the imposition of administrative measures. 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.[39] Of the 13 appeals, 1 was declared inadmissible – ratione temporis – by AMMC.

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 measures, the Minister may extend this period once by 90 days. If no decision is taken within the given period, the administrative measures expire. In 11 of the 12 admissible appeal cases the Minister took a decision within the 90-day term. In all the submitted appeal cases the Minister followed AMMC's advice.

The graph below shows the shares of appeals against the imposition of administrative measures, by nature, compared to the total number of administrative measures imposed.



Graph 37) Shares of appeals against the imposition of administrative measures compared to the total number of administrative measures imposed.

Although the 'regularisation order' is imposed most frequently, this is not reflected in the number of appeals against this type of administrative measures. An appeal was submitted to the Minister by the suspected offender for only 1.48% of all 'regularisation orders', i.e. for 2 out of 135 'regularisation orders' imposed. There are two possible reasons for this. One is that too many regularisation orders were counted, and that an erroneous interpretation of the terminology is used by the enforcement actors. Another possible reason could be that a 'regularisation order' is less drastic than a 'prohibition order', allowing suspected offenders to continue their activities while taking action to comply with the regulations.

According to the figures above, appeals are lodged especially following the imposition of a 'combination of administrative measures' or a 'prohibition order'. In the case of a 'combination of administrative measures', appeals were reported for more than 1 in 10 cases, concretely 10.64%. For the 'prohibition order' this was the case for 5 out of 55 administrative measures imposed, which represents a share of 9.09%.

'Administrative coercive' was used least often during the 2009 study period. Their share in the number of appeal cases is also the smallest. None of the appeals submitted referred to 'administrative coercive'.

3.6.3.2 Number of appeals submitted against refused requests for the imposition of administrative measures and decisions taken

Besides appeals against the imposition of administrative measures, 8 appeals were submitted against refused requests for the imposition of administrative measures in the same period. In this procedure as well, appeals are prepared and advice is given by AMMC. Of these 8 appeals, 2 were declared inadmissible by AMMC.

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. During the study period the Minister took a decision after the 60-day term had expired in 1 of the 6 admissible cases. This was due to the fact that a document that was essential to the evaluation of the appeal could not be submitted within the stipulated term, and hence had to be waited for. In all submitted appeal cases the Minister followed AMMC's advice.

3.7 EVALUATION OF THE INSTRUMENT 'SAFETY MEASURES'

In Chapter VII of Title XVI of DABM the procedure for applying safety measures to persons responsible for a substantial risk, but also the withdrawal 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.

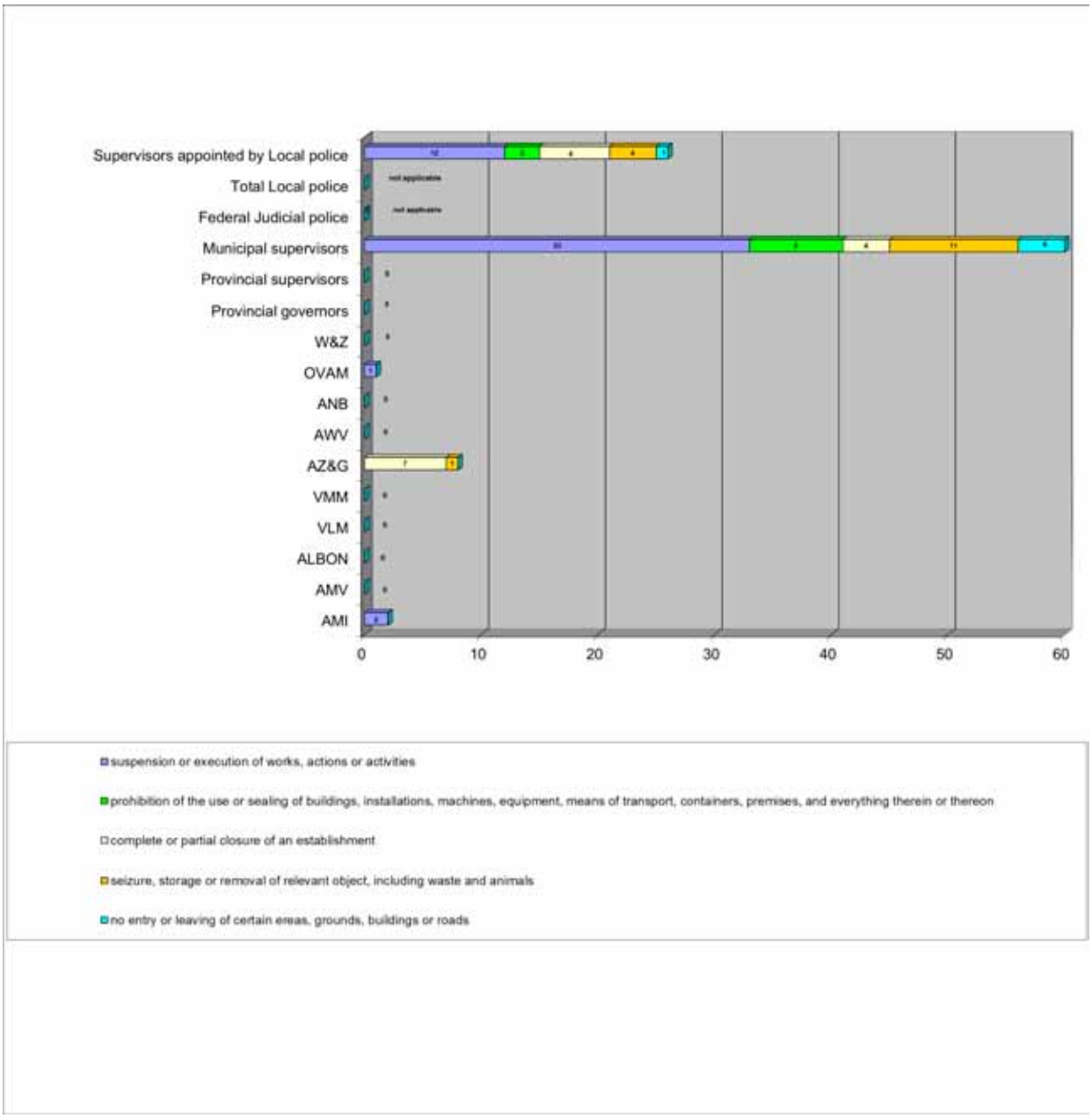
Article 16.7.1 defines the instrument 'safety measures' as follows: *'Safety measures are measures by which the persons mentioned in Article 16.4.6 can take or impose all actions they consider necessary under the given circumstances in order to eliminate, reduce to an acceptable level or stabilise a 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):

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

The figures below show that it is mainly the first type of safety measures, namely 'the suspension or execution of works, actions or activities, immediately or within a given term', which is used by the enforcement actors. Nearly 1 in 2 safety measures imposed (49.48%) are safety measures of this type. The use of the safety measures mentioned under 3, 'the complete or partial closure of an establishment', and 4, 'the seizure, storage or removal of relevant objects, including waste and animals' are the second and third most used types. Even so, the gap with the first type of safety measures is very big, seeing as their respective use amounts to 17.35% and 16.33% of the total number of safety measures imposed. 'The prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon' is chosen by supervisors for slightly more than 1 in 10 (11.22%) safety measures imposed. The least popular safety measures are those falling under 'no entry to or leaving of certain areas, grounds, buildings, or road'. For this type of safety measures a use of 5.10% was recorded.

	suspension or execution of works, actions or activities	prohibition of the use or sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	complete or partial closure of an establishment	seizure, storage or removal of relevant objects, including waste and animals	no entry to or leaving of certain areas, grounds, buildings, or roads
AMI	2	0	0	0	0
AMV	0	0	0	0	0
ALBON	0	0	0	0	0
VLM	0	0	0	0	0
VMM	0	0	0	0	0
AZ&G	0	0	7	1	0
AWV	0	0	0	0	0
ANB	0	0	0	0	0
OVAM	1	0	0	0	0
W&Z	0	0	0	0	0
Provincial governors	0	0	0	0	0
Provincial supervisors	0	0	0	0	0
Municipal supervisors	33	8	4	11	4
Federal judicial police	0	0	0	0	0
Total local police	0	0	0	0	0
Supervisors appointed by the local police	12	3	6	4	1

Table 11) *Nature of the safety measures imposed*



Graph 38) Nature of the safety measures imposed

The use of the imposition of safety measures as an enforcement instrument seems to be concentrated among local supervisors. Especially municipal supervisors use this instrument quite frequently, namely in 1 in 10 performed environmental enforcement inspections (10.70%). Among supervisors appointed by the local police the number of safety measures imposed was 26 for a total of 1,116 performed environmental enforcement inspections, which means a share of 2.33%.

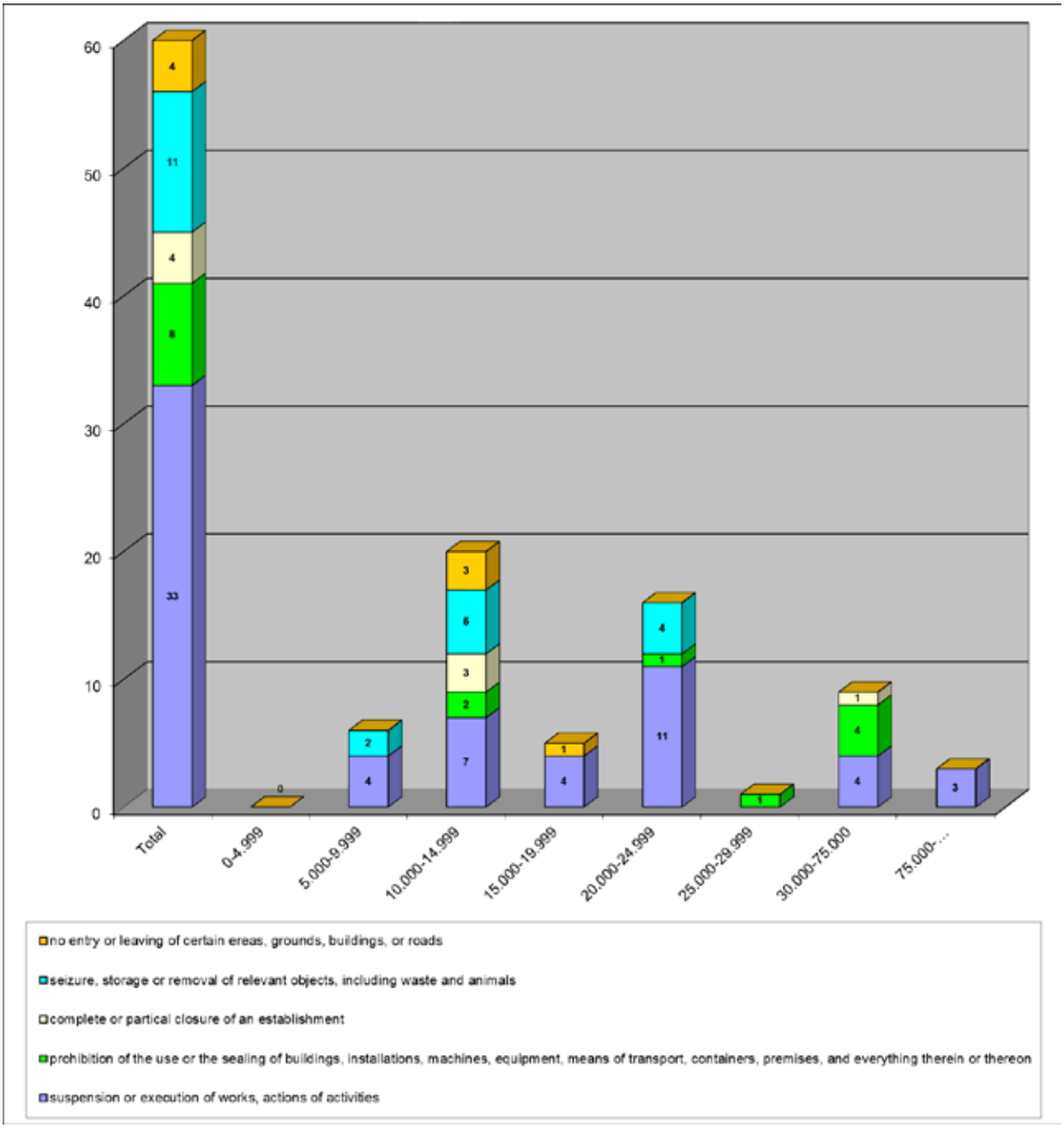
Where the 12 regional supervisors are concerned, safety measures are only included in the instruments used by supervisors for 3 regional enforcement actors. In the period from 1 May 2009 to 31 December 2009 the Agency for Care and Health imposed 8 safety measures (2.16%). Unlike for the other enforcement actors, for this actor it is not 'the suspension or execution of works, actions or activities, immediately or within a given term' which was used most. On the contrary: not one of the 8 safety measures imposed was of this type. However, 87.5% of the safety measures imposed by the Agency for Care and Health involved 'the complete or partial closure of an establishment'.

The other two regional enforcement actors that have imposed safety measures since the coming into force of the Environmental Enforcement Decree on 1 May 2009 are AMI and OVAM. The supervisors of

these two bodies opted for 'the suspension or execution of works, actions or activities, immediately or within a given term'. AMI used the instrument 'safety measures' twice during 8,436 environmental enforcement inspections; OVAM supervisors applied safety measures once during 706 inspections.

3.7.1 Nature of the administrative measures imposed by municipal supervisors (according to population)

According to the abovementioned figures, municipal supervisors impose safety measures in approximately 1 in 10 environmental enforcement inspections. The graph below shows the number and nature of the safety measures imposed per type of municipality.



Graph 39) *Nature of the administrative measures imposed by municipal supervisors (according to population)*

The supervisors of municipalities with a population between 20,000 and 24,999 inhabitants are most active when it comes to imposing safety measures. 5.25% of the environmental enforcement inspections carried out by these supervisors results in the imposition of safety measures. In 68.75% of cases, the

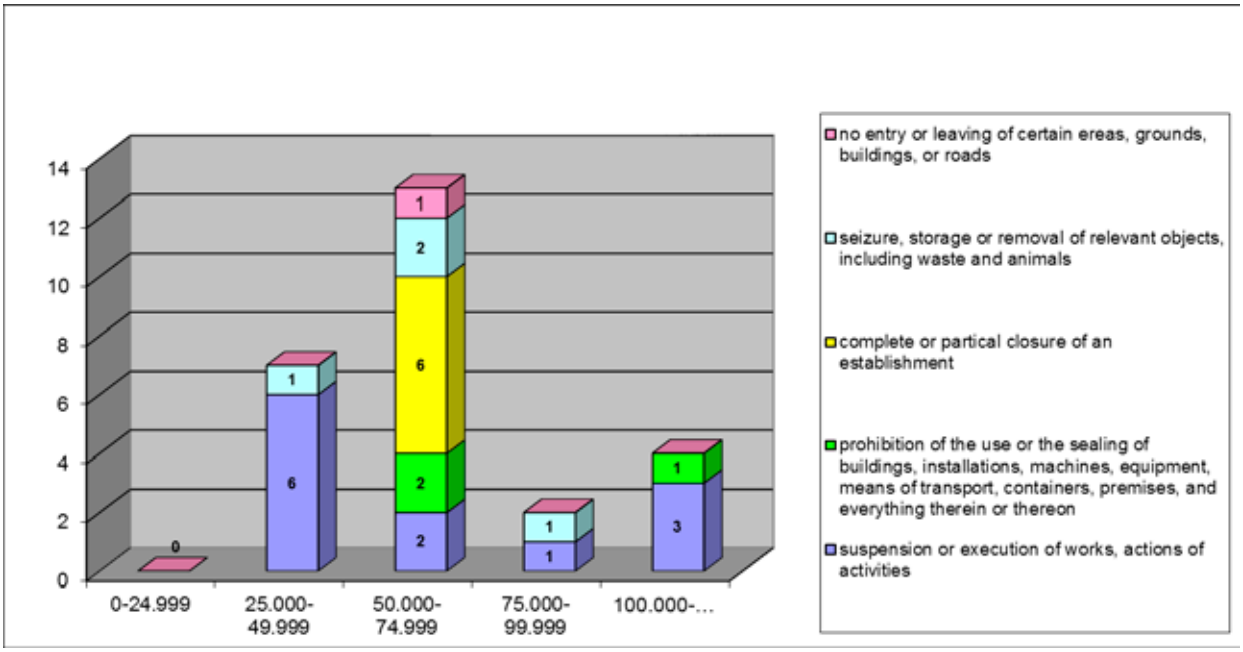
nature of these safety measures is 'the suspension or execution of works, actions or activities, immediately or within a given term'.

Contrary to what one would expect, the lowest number of safety measures are imposed by cities with more than 75,000 inhabitants, and by municipalities with a population between 25,000 and 30,000. In these cities and municipalities only 3 out of 2,888 and 1 out of 206 inspections performed, respectively, resulted in the imposition of safety measures. A thorough explanation of this difference has not yet been found.

For the other categories of municipalities the use of safety measures varies between 1.09% and 2.83% of inspections carried out.

3.7.2 Number and nature of the safety measures imposed by local police supervisors

Other local supervisors who use safety measures as an instrument are supervisors appointed by the local police. As we have indicated before, the share of safety measures carried out by these supervisors compared to the total number of environmental enforcement inspections is 2.33%. In this section, we will look at whether differences can be found in the nature and number of the safety measures imposed between local police supervisors of different police districts.



Graph 40) Nature and number of the safety measures imposed by local police supervisors (according to police district population)

According to the graph above, the smallest police districts – those with a population smaller than 25,000 – seem to be unfamiliar with the use of 'safety measures' as an instrument. This deserves attention in the next environmental enforcement reports, so that – if this finding is confirmed – an adequate solution can be found.

The largest police districts – those with populations of 75,000 and more – imposed the largest number of safety measures. Nearly 1 in 10 environmental enforcement inspections, concretely 9,75%, ended with the imposition of safety measures on persons responsible for a substantial risk. In these police districts as well, the trend can be confirmed that the majority of safety measures (75%) refer to 'the suspension or execution of works, actions or activities, immediately or within a given term'.

For police districts with between 50,000 and 75,000 inhabitants, the imposition of safety measures represents a 5.46% share compared to the number of environmental enforcement inspections carried out. Contrary to the general tendency, in this category it can be observed that the majority of safety

measures imposed (37.5%) involved 'the complete or partial closure of an establishment'. In the categories of police districts with 25,000-50,000 and 75,000-100,000 inhabitants safety measures were imposed in, respectively, 7 of the 664 (1.05%) and 2 of the 149 (1.34%) inspections carried out. In these categories of police districts, once again, 'the suspension or execution of works, actions or activities, immediately or within a given term' is the most common form.

3.8 CONCLUSION

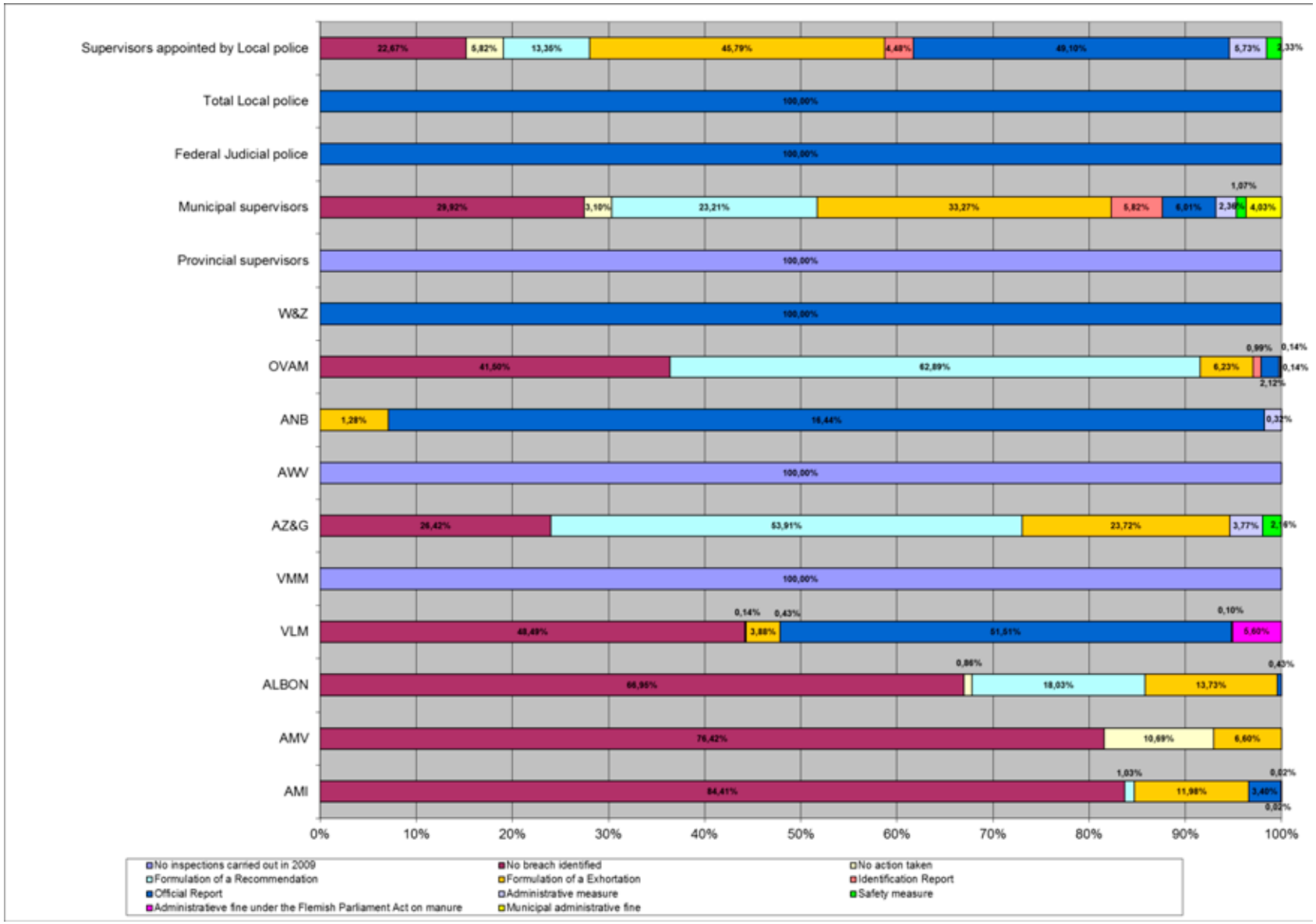
The graph and table on the next pages illustrate the use made by the individual enforcement actors, in terms of percentage, of the complete set of enforcement instruments in relation to the number of inspections carried out by the enforcement actor in question. Besides the use of the enforcement instruments, the graph also includes the number of enforcement inspections in which no breach was observed.

It can be observed that half of all enforcement actors report enforcement inspections in which no breach was observed. Based on the total number of inspections carried out, the share of the number of inspections in which no breach was observed can reach 84.41%.

These figures can be interpreted as positive: they can be seen as proof that the environmental legislation is effectively being complied with, often thanks to the continued efforts of those enforcement actors who have been working in this field for years. On the other hand, breaches were observed in at least 15% of the inspections. However, based on the figures at hand the nature and the dimensions of these breaches cannot be determined. These will depend on the inspecting body, and on the inspected activity or establishment.

It is possible that, for some enforcement actors, many of the inspections in which no infringement is observed are carried out in the framework of a legal requirement or a systematic follow-up of businesses. Nevertheless, the low number of breaches observed raises the question whether there may be other reasons for the high proportion of inspections in which no breaches were observed. In this context, one can think, for instance, of enforcement actors who are frequently required to act on complaints that later turn out to be unfounded. Obviously, this problem creates a disproportionate burden on the enforcement actor, putting at risk the effective inspections carried out with a view to the environmental gain sought.

Another possible cause of the share of the number of inspections in which no breaches were observed could lie in a lack of planning of the efficiency and effectiveness of the environmental enforcement actions performed among various enforcement actors. For these actors, building a thorough knowledge of the target group and, for instance, including a system of risk analysis in their methodology can only be beneficial.



Graph 41) *Use, in terms of percentage, of the enforcement instruments by the individual enforcement actors*

	No inspections carried out in 2009	No breach observed	No action taken	Formulation of a Recommendation	Formulation of an Exhortation	Identification report	Official report	Administrative measure	Safety measure	Administrative fine under the Decree on manure	Municipal administrative fine
AMI	0,00%	84,41%	0,00%	1,03%	11,98%	0,00%	3,40%	0,02%	0,02%	0,00%	0,00%
AMV	0,00%	76,42%	10,69%	0,00%	6,60%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
ALBON	0,00%	66,95%	0,86%	18,03%	13,73%	0,00%	0,43%	0,00%	0,00%	0,00%	0,00%
VLM	0,00%	48,49%	0,00%	0,14%	3,88%	0,00%	51,51%	0,10%	0,00%	5,60%	0,00%
VMM	100,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
AZ&G	0,00%	26,42%	0,00%	53,91%	23,72%	0,00%	0,00%	3,77%	2,16%	0,00%	0,00%
AWV	100,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
ANB	0,00%	0,00%	0,00%	0,00%	1,28%	0,00%	16,44%	0,32%	0,00%	0,00%	0,00%
OVAM	0,00%	41,50%	0,00%	62,89%	6,23%	0,99%	2,12%	0,14%	0,14%	0,00%	0,00%
W&Z	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	100,00%	0,00%	0,00%	0,00%	0,00%
Provincial supervisors	100,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
Municipal supervisors	0,00%	29,92%	3,10%	23,21%	33,27%	5,82%	6,01%	2,36%	1,07%	0,00%	4,03%
Federal judicial police	unk.	unk.	unk.	unk.	unk.	unk.	100.,00%	unk.	unk.	unk.	unk.
Total local police	unk.	unk.	unk.	unk.	unk.	unk.	100.00%	unk.	unk.	unk.	unk.
Supervisors appointed by the local police	0,00%	22,67%	5,82%	13,35%	45,79%	4,48%	49,10%	5,73%	2,33%	0,00%	0,00%

Table 12) *Use, in percentages, of the enforcement instruments by the individual enforcement actors*

In the discussion below 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 'inspection without further action'.

The most important note to be made in the discussion of **'inspections without further action'** is, without a doubt, Article 29 of the Code of Criminal Procedure. As the extract from this article included in Chapter 3.1 shows, the identification of an offence without taking further action is contrary to the aforementioned legal provision, and must therefore be avoided. Even so, a number of enforcement actors report inspections carried out during the 2009 study period in which no action was taken following identified breaches. Apparently, there is an area of tension between the legal requirements and practice. In order to encourage the exchange of knowledge and experience in relation to the instruments available, the VHRM wants to, and is going to, set up a forum within which these initiatives can take place.

At first sight, the instrument **'Recommendation'** seems to be well integrated into the enforcement activities in the field. One could even carefully conclude that no special attention is required for this instrument. Nevertheless, there is the risk that this instrument is not only used by supervisors as a preventive instrument, but also as a means to 'regularise' the situation in the field. Obviously, the 'Recommendation' as an enforcement instrument will also be included in the discussion of the development and the use of the enforcement instruments by the individual enforcement actors, so attention can be drawn to this.

While the 'Recommendation' is rather a preventive instrument, the '**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. From the figures at hand it can be deduced that supervisors often use the 'Exhortation' in combination with the 'official report'. Even so, a number of supervisors make intensive use of the instrument 'Exhortation' without necessarily linking this to an official report. Based on this different approach, an assessment of these methods in the future may be desirable.

It is clear from its use by the enforcement actors that the '**identification report**' is a new enforcement instrument. Very few enforcement actors report having drawn up identification reports in the period from 1 May 2009 to 31 December 2009. What is also remarkable, without a doubt, is the difference between the number of identification reports drawn up, on the one hand, and the number of identification reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy on the other. From this, it could be concluded that supervisors are still 'struggling' with the terminology and provisions of the Environmental Enforcement Decree, and that they are insufficiently familiar with the new environmental enforcement procedures. In order to remedy this, the VHRM working groups are diligently working on the exchange of information, expertise and experiences. Furthermore, good training of supervisors and enough time to spend on supervisory duties will only contribute to a further integration of the 'identification report' as an enforcement instrument to deal with decriminalised environmental infringements.

In relation to the 'identification report' it is also important to refer to Article 16.3.23 of the decree 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, based on which an official report has to be drawn up for all identified offences, the Environmental Enforcement Decree leaves supervisors the choice of whether or not to take action when identifying an environmental infringement.

In other words, drawing up an identification report is not an obligation. Supervisors have a 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 Decree is drawn up, this must also effectively be submitted to 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 offences. In view of the figures above, the question arises whether this aspect of supervisors' discretionary power should be subjected to further study.

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 efforts are concentrated on dealing with environmental offences.

The **'official report'**, unlike the 'identification report', is not a new enforcement instrument – far from it. The fact that supervisors are perfectly familiar with this enforcement instrument is apparent from its frequent use. However, the figures do not allow for a normative evaluation of official reports drawn up. This is because, in most cases, the content of an official report drawn up by the local police and an official report drawn up by a regional enforcement actor refer to entirely different kinds of enforcement, in which different types of breaches are identified, for instance where the complexity of both the content and the legal nature are concerned. The next environmental enforcement reports of the VHRM will have to show whether such normative evaluation is possible in the future, so that supervisors' efforts can be assessed not only based on the number, but also based on the content of the official reports drawn up.

Although, generally speaking, the use of **'administrative measures'** was very infrequent, this instrument was used mainly by local supervisors. Regional supervisors also seem to be becoming slightly more familiar with it. However, the imposition of administrative measures by provincial governors certainly seems to deserve further attention with a view to the future. It is possible that provincial governors lack the necessary expertise and/or resources to implement the new competences assigned to them under the Environmental Enforcement Decree, because no action was taken following the requests for the imposition of administrative measures.

Between 1 May 2009 and 31 December 2009 – from the coming into force of the Environmental Enforcement Decree onwards – the Minister in charge of the Environment received 13 **appeals against the imposition of administrative measures**. One of these was declared inadmissible by AMMC. In 11 of the 12 admissible appeals the Minister took a decision within the stipulated term. Besides these appeals against the imposition of administrative measures, 8 appeals relating to refused requests for the imposition of administrative measures were received in the same period. Two of these appeals were declared inadmissible by AMMC. In the period in question the Minister took a decision within the stipulated (indicative) term in 5 of the 6 admissible cases.

As was the case for 'administrative measures', the instrument **'safety measures'** was used mainly by local supervisors. Nevertheless, there are no clear signs of a lack of knowledge and/or expertise with respect to the use of this instrument among regional enforcement actors.

Not only for safety measures, but for all enforcement instruments, and for all enforcement actors, it will be important to develop clear guidelines on the way in which supervisors should use the different enforcement instruments. These guidelines should give attention not only to which instrument should be used in which situation, but also to the optimal combination of the available enforcement instruments.

An example of such guidelines can be found, for instance, in the activities of the Environmental Inspectorate Division of the LNE Department. In their striving for uniformity in the activities of the different Local Services, they have a number of internal guidelines referring to the (combined) use of the different enforcement instruments. AMI will use the instrument 'Exhortation' in two cases, namely:

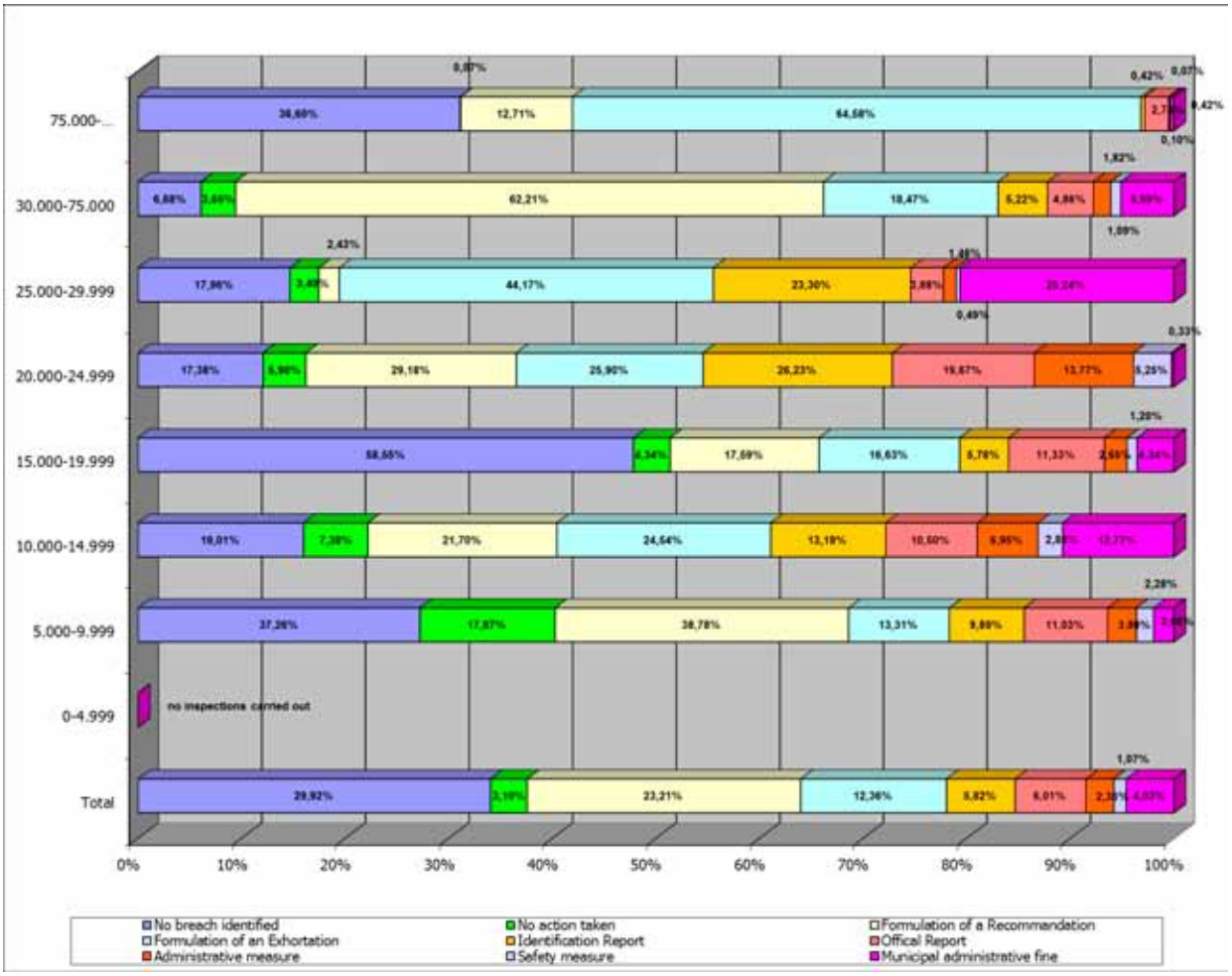
1. an infringement is identified: first, the infringer is exhorted to 'regularise the situation'. If the Exhortation is ignored, an identification report is drawn up.
2. an offence is identified: aside from the official report for the public prosecutor required under Article 29 of the Code of Criminal Procedure, in principle, the 'administrative enforcement' is started with an Exhortation.

The VHRM wants to, and is going to, set up a forum for the various enforcement actors within which information and experiences can be exchanged, in order to provide individual enforcement actors with a number of criteria/guidelines for the (combined) use of the enforcement instruments available, adapted to their individual needs. As problems, advantages and disadvantages experienced by colleagues can be taken into account, actors will not only be able to work on the development of guidelines in a more

effective and efficient way, but the guidelines of the different enforcement actors may also be better attuned to each other.

Evaluation of the use of the enforcement instruments by local supervisors

Applying the same method as in Chapter 3, we will again represent the use, in terms of percentage, of the enforcement instruments by the municipal supervisors based on the previously used categories.

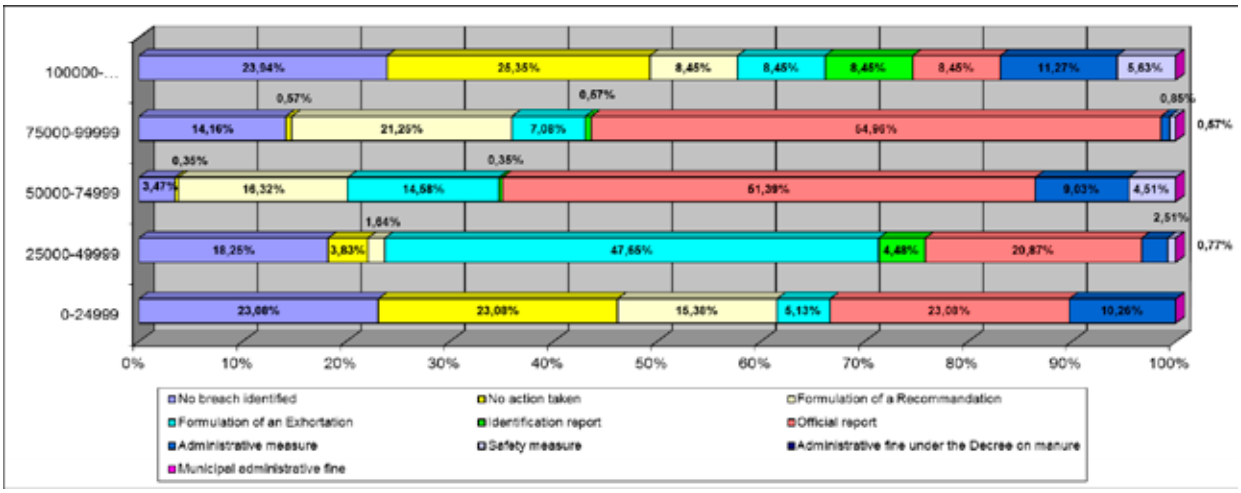


Graph 42) *Use, in terms of percentage, of the enforcement instruments by municipal supervisors (according to population)*

	Total	0-4.999	5,000-9,999	10.000-14.999	15.000-19.999	20.000-24.999	25.000-29.999	30.000-75.000	75.000-...
Response	193	4	49	53	27	23	9	23	5
No breach identified	29,92%	0,00%	37,26%	19,01%	58,55%	17,38%	17,96%	6,68%	36,60%
No action taken	3,10%	0,00%	17,87%	7,38%	4,34%	5,90%	3,40%	3,65%	0,07%
Formulation of a Recommendation	23,21%	0,00%	38,78%	21,70%	17,59%	29,18%	2,43%	62,21%	12,71%
Formulation of an Exhortation	12,36%	0,00%	13,31%	24,54%	16,63%	25,90%	44,17%	18,47%	64,58%
Identification report	5,82%	0,00%	9,89%	13,19%	5,78%	26,23%	23,30%	5,22%	0,42%
Official report	6,01%	0,00%	11,03%	10,50%	11,33%	19,67%	3,88%	4,86%	2,74%
Administrative measure	2,36%	0,00%	3,80%	6,95%	2,65%	13,77%	1,46%	1,82%	0,07%
Safety measure	1,07%	0,00%	2,28%	2,84%	1,20%	5,25%	0,49%	1,09%	0,10%
Administrative fine under the Decree on manure	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
Municipal administrative fine	4,03%	0,00%	2,66%	12,77%	4,34%	0,33%	25,24%	5,59%	0,42%

Table 13) *Use, in terms of percentage, of the enforcement instruments by municipal supervisors (according to population)*

As the figures above overlap with the figures referring to the use, in terms of percentage, of the enforcement instruments by local police supervisors, the graph and table below show the detailed figures for these supervisors as well, in order to be able to draw a conclusion based on both sets of data.



Graph 43) *Use, in terms of percentage, of the enforcement instruments 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-...
Response	8	54	16	8	5
No breach identified	23,08%	18,25%	3,47%	14,16%	23,94%
No action taken	23,08%	3,83%	0,35%	0,57%	25,35%
Formulation of a Recommendation	15,38%	1,64%	16,32%	21,25%	8,45%
Formulation of an Exhortation	5,13%	47,65%	14,58%	7,08%	8,45%
Identification report	0,00%	4,48%	0,35%	0,57%	8,45%
Official report	23,08%	20,87%	51,39%	54,96%	8,45%
Administrative measure	10,26%	2,51%	9,03%	0,85%	11,27%
Safety measure	0,00%	0,77%	4,51%	0,57%	5,63%
Administrative fine under the Decree on manure	0,00%	0,00%	0,00%	0,00%	0,00%
Municipal administrative fine	0,00%	0,00%	0,00%	0,00%	0,00%

Table 14) *Use, in terms of percentage, of the enforcement instruments by local police supervisors (according to police district population)*

With respect to the use of the enforcement instruments by local supervisors, the graph and table above show that, by these supervisors as well – concretely supervisors connected to the municipal authorities, supervisors of intermunicipal associations and supervisors of the police districts – a large number of inspections are carried out without breaches being identified. From these figures, it can be concluded that in at least 3.47%, and up to 23.94%, of all inspections it was found that the applicable environmental legislation was being complied with. It could be that local supervisors are carrying out a large number of inspections following complaints which later turn out to be unfounded. In any case, another possible cause of the share of the number of inspections in which no breaches were observed could lie in a lack of planning of the efficiency and effectiveness of the environmental enforcement inspections performed by municipal supervisors. The fact that, according to the figures included in Chapter 3.2.2.3, these municipal supervisors often have no information on the number of nuisance-causing plants on their territory fuels this suspicion.

Local supervisors also still seem to identify breaches during environmental enforcement inspections without taking appropriate action. The figures even indicate that in as many as 1 in 4 inspections a breach was identified but the necessary action was not taken. Also in light of the provisions of Article 29 of the Code of Criminal Procedure, this situation must be remedied at the local level as well, for instance by using the entire set of instruments available under the Environmental Enforcement Decree. In conclusion, there seems to be a clear field of tension between the legal provisions and practice. In order to make optimal use of the possibilities offered by the Environmental Enforcement Decree, it is important that local supervisors be given sufficient time and resources to build expertise and knowledge in relation to the supervisory duties assigned to them. The support to Flemish municipalities that is being prepared by the Flemish Government could be a first step in the right direction.

Moreover, at the local level as well, a number of criteria need to be developed on the basis of which it can be determined which instrument to use in which situation, possibly in combination with one or more other instruments. In the development of these individual guidelines for the use of the environmental enforcement instruments available, it is important for local supervisors to be able to fall back on experiences of regional supervisors if required. In this sense, it may be useful, for instance, for the provincial contact points which provide support to municipalities with a view to their enforcement policies to take initiatives to exchange information; another idea could be the dissemination of information via an umbrella organisation such as VVSG.

Where the instruments **'Recommendation'** and **'Exhortation'** are concerned, no immediate problems seem to arise from their application in the field. In practically all categories of municipalities and police districts these instruments are being used. Moreover, this allows local supervisors who are not yet familiar with these instruments to turn to colleagues for advice, contributing to their further embedding into the methods used. As for regional supervisors, it remains important to distinguish clearly between the preventive nature of the 'Recommendation' in comparison with the curative instrument 'Exhortation'.

Up to now, local supervisors have also made very little use of the **'identification report'** as an enforcement instrument. Moreover, from the figures referring to administrative enforcement and the problem of the erroneous interpretation of the terminology of the questionnaire it can be concluded that local supervisors are not yet familiar with the terminology and procedures included in the Environmental Enforcement Decree. This conclusion only reinforces the previously formulated recommendation to give local supervisors time and resources to adequately familiarise themselves with the provisions of the Environmental Enforcement Decree and integrate these into their daily activities.

Local supervisors seem to be very familiar with the use of the **'official report'**, and this instrument seems to be embedded especially in the enforcement instruments used by the local police. **'Administrative measures'** and **'safety measures'**, according to the figures at hand, are mainly used by local supervisors. It could therefore be a possibility to optimise and concentrate this expertise at the provincial level, so that this knowledge and expertise can be used to support provincial governors and burgomasters in their duty to impose administrative measures and/or safety measures.

4 EVALUATION OF THE FLEMISH ENVIRONMENTAL SANCTIONS POLICY IN 2009

With the addition of Title XVI 'Monitoring, Enforcement and Safety Measures' to the decree of 5 April 1995 containing general provisions on environmental policy, 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[40]. 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 a danger to people or the environment, and which are listed exhaustively by the Flemish Government in the Appendices to the implementing acts of the Environmental Enforcement Decree. 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 Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy (AMMC). 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 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. The regional body can impose an exclusive fine, whether or not accompanied by a deprivation of benefits. After receiving the identification report, 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 must decide 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 written reminder from the person who reported the offence, this period can be extended by another period of maximum 180 days. 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 AMMC in due time rule out the imposition of an administrative fine.

If the public prosecutor informs AMMC in due time of his decision not to prosecute the environmental offence, AMMC must start the procedure aimed at the possible imposition of an alternative administrative fine. After receiving this decision, 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). AMMC then has 180 days to decide whether an alternative administrative fine (whether or not accompanied by a deprivation of benefits) will be imposed. Within ten days, the suspected offender must be informed of this decision.

[40] 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.

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 Decree for infringements included in Article 63 of the decree of 22 December 2006 on the protection of water against agricultural nitrate pollution (Decree on manure). The decree 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 decree, 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 2009, we will not only look at the activities of the public prosecutors, but also at those of the Environmental Enforcement, Environmental Damage and Crisis Management Division, those of the Environmental Enforcement Court and those of the Flemish Land Agency. Here as well, the term 'evaluation' must be used with the necessary caution. Seeing as the decree 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 less than a year with the Environmental Enforcement Decree in force.

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 between 1 May 2009 and 31 December 2009. 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 prosecutors of the Flemish Region, and what treatment those cases received. The data below are a selection of the data collected.

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 public prosecutors and the Board of Procurators General, which is based only on registrations by the criminal divisions of the public prosecutors of the courts of first instance, and does not contain any data on the number of environmental cases processed by the public prosecutors or the cases related to environmental matters processed by police prosecutors[41]. It should be pointed out that in these data a different terminology is used than that 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) has also had an impact on the number of environmental dossiers submitted to public prosecutors.

2009. Therefore, these data were selected based on the end date of the events to which the official report referred. Where the end date was unknown, the selection was made based on the date on which the events started. In cases where the start date had not been entered into the database either, the selection was made based on the date on which the dossier was submitted to the public prosecutor. This can give rise to a slight margin of error.

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 prosecutors 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 offence took place (where offences 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 has to do with the fact that each official report received by a public prosecutor is entered into the database and assigned a reference number. If this official report has to be referred to another public prosecutor, it is entered into the database once more, and assigned a new reference number.

Simplified official reports[43] are not included in the database of the public prosecutors. The public prosecutors are only provided with a list of those simplified official reports. However, if the official report is requested by the public prosecutor after all, the database does take this case into account. The problem is that the simplified official reports are included in the General National Database, 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 prosecutors are not statistics on crime or breaches of the regulations, and must therefore not be interpreted as such.

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

- Nature protection law:
  - 63A - Hunting
  - 63B - Fishing
  - 63M - Forest Decree
  - 63N - Washington Convention - protected animal species, plants and ivory
  - 64J - Decree 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[44]:
  - 64E - Illegal dumping

[43] 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 prosecutors is reduced.

[44] There are no separate charge codes (number and letter) for breaches relating to the Soil Decree, which is why these are classified under the code 'Waste'.

- 64F - Waste management
- 64L - Importation and transit of waste (law of 9 July 1984)

- Manure:
  - 63I - Manure
  - 63O - Decree on Manure
- Licences:
  - 64D - Commodo-Incommodo (Environmental Licence)
  - 64H - Operation of a nuisance-causing plant without a licence
  - 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 Act of 24 February 1977)
  - 64G - Illegal water abstraction
  - 64M - Surface water pollution
  - 64N - Groundwater pollution

A relevant selection was made of the data the VHRM received from the central database of the statistical analysts connected to the public prosecutors and the Board of Procurators General. The relevant period for this environmental enforcement report runs from 1 May 2009 to 31 December 2009. Where possible, the statistical analysts took into account this request. A selection of cases of environmental enforcement was made based on the abovementioned codes for the different charges.

First of all, a picture will be provided of the total number of dossiers received by the public prosecutors. This will be done according to the codes above, and, whenever possible, by reporting authority.

Then, we will look at the last state of progress (on 10 January 2010) of the dossiers received from the public prosecutors between 1 May 2009 and 31 December 2009, after which we will discuss the reasons for the dismissal of the cases falling under environmental enforcement. Given that the reference date for these data is 10 January 2010, it is important to interpret the states 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 2010, 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 prosecutors' offices in the Flemish Region in 2009, per reporting authority, and subdivided into four different categories, namely: *general police, inspection services, complaints and civil proceedings,* and *other submissions.*[45]

[45] Cases recorded by the public prosecutors of the police courts were not included in the figures provided.

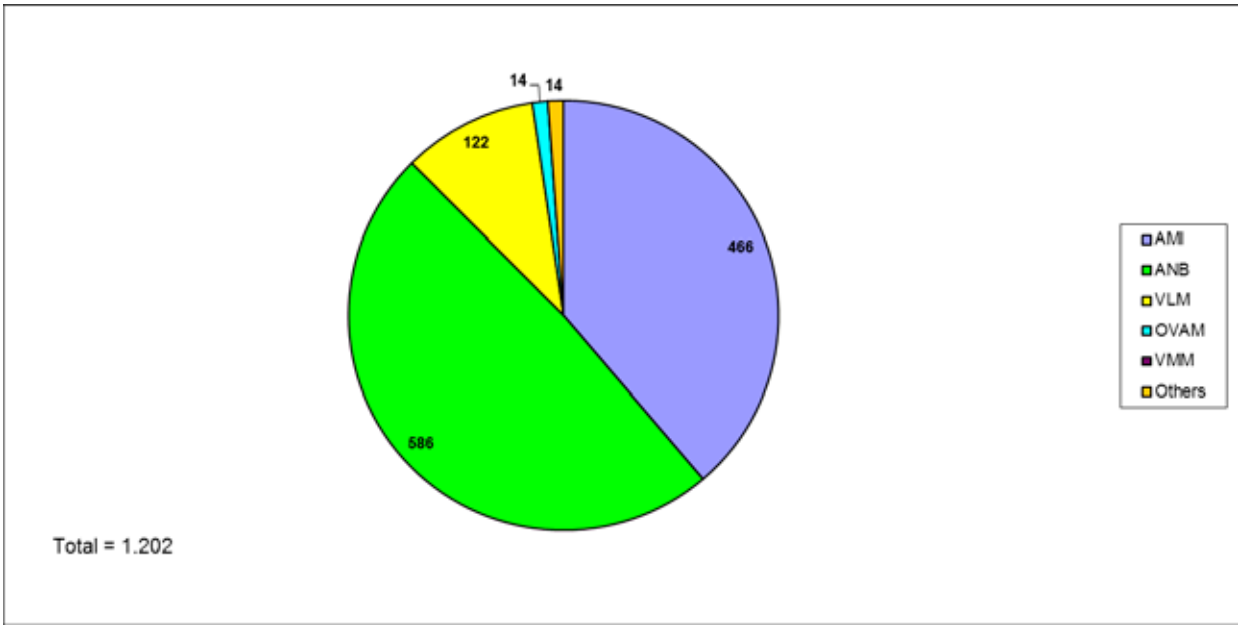
enforcement of environmental infringements and offences as a strategic objective. The new legal framework – the Environmental Enforcement Decree – should make it possible to react quickly and make a clear statement when imposing exclusive (in the case of environmental infringements) and alternative (in 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 Decree is also included in the policy memorandum as an operational objective. The main objectives and priorities of the environmental enforcement policy will be determined taking into account the recommendations in the annual environmental enforcement programmes, drawn up by the Flemish High Council of Environmental Enforcement. Enforcement practice will be evaluated for its effectiveness and efficiency, among other things via the annual environmental enforcement reports. Cooperation agreements between the different environmental enforcement actors will, when considered useful, be embedded into enforcement protocols. In the framework of the decree 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 establishments with more environmental relevance (such as Seveso and GPBV 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 self-monitoring inspections of companies are central. Attention must also be paid to the supervision of unlicensed facilities and activities which nevertheless require a licence.

In implementation of the Coalition Agreement of 15 July 2009 the Flemish Government opts for a partnership with strong local administrations, also in the area of environmental and nature policy. Important strategic objectives therefore include that the Flemish authorities fight compartmentalisation, create more internal collaboration and synergies, and support 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.

It should be clear that the Flemish High Council of Environmental Enforcement can play a role in the support of the Flemish Government and the Flemish Minister for Environment, Nature and Culture in the implementation of the Coalition Agreement and the Policy Plan.



Graph 45) *Number of Environmental Enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutors' offices in the Flemish Region in 2009.*

In 2003 a technical working group was set up within the Committee on Prosecution Policy, with the aim to improve insight into the cases submitted to the public prosecutors' offices by the environment services of the Flemish Region. The only code 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 prosecutors 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[50]

Using these specific reference numbers, it was possible to create the graph above for all of 2009. This shows how many cases were submitted by which Flemish environment service as reporting authority.

In total, the Flemish environment services submitted 1,202 Environmental Enforcement cases to the public prosecutors.

Currently Forest & Green Areas and Nature are combined in the Agency for Nature and Forests. This is reflected accordingly in the graph, where ANB comprises cases falling under H2 and H3. ANB also submitted most cases to the public prosecutor throughout 2009, namely 48.75% of the total number of cases submitted to the public prosecutors by the Flemish environment services. The Environmental Inspectorate Division represented 38.77%, the Flemish Land Agency 10.15%, the Public Waste Agency of

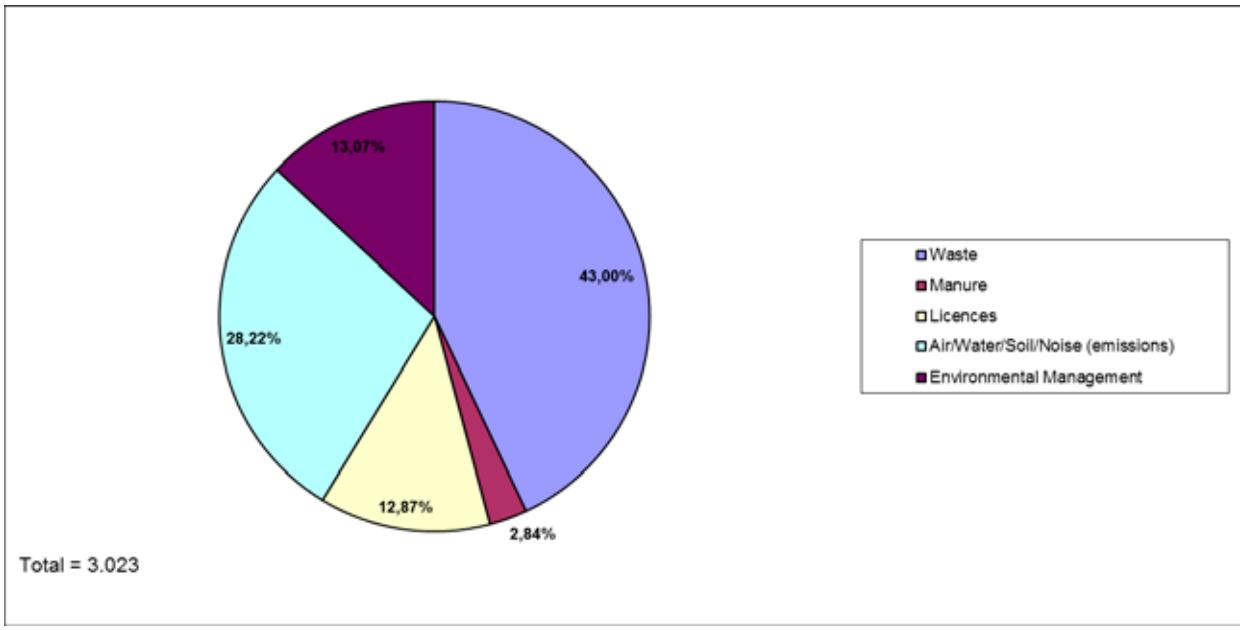
[50] H7 would include mainly official reports coming from the 'roads and traffic administration' and the 'waterways and maritime affairs administration'. As it was possible that these services would undergo changes, but no clear information was available on the nature of those changes, it was decided to let them both use code H7. The 'roads and traffic administration' would then no longer use the code 'WG', which had previously been reserved for this body.

Flanders 1.16%, and the remaining environment services 1.16% as well. It should also be noted that the Flemish Environment Agency did not submit any cases at all to the public prosecutor in 2009. But this was already clear from the previous chapters, as VMM did not carry out any inspections either.

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 cannot be identified. A recommendation for the next reports could be for the different environment administrations to make consistent use of these codes.

We have already provided an overview of the different codes for charges that are used in the registration of Environmental Enforcement cases. This allows us to present an overview in the graphs below of the share of each code in the total number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices in the Flemish Region in 2009.

The graph below illustrates the percentage of cases recorded with the codes for the charges under the headings of *waste, manure, licences, air/water/soil/noise (emissions)* and *nature protection*, compared to the total number of cases recorded with one of these codes. For cases recorded with the codes for charges under the headings of *waste, manure, licence* and *emissions*, it concerns the Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region after 1 May 2009; for cases recorded with the codes for charges under the heading of *nature protection* it concerns the Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region after 25 June 2009.



Graph 46) *Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region, per main charge, for cases after 1 May 2009 when it comes to environmental health law and cases after 25 June 2009 when it comes to nature protection law*[51]

[51] The percentages have been calculated based on two different reference periods. For the categories of waste, manure, licences and emissions the numbers referred to a period of 8 months, whereas for the category of nature protection law the numbers referred to a period of slightly over 6 months. As a result, the share of nature protection law is an underestimation, and the percentages for the other four matters are overestimations. These figures, and the accompanying text, must therefore be placed into perspective.

This results in a total of 3,023 cases. With respect to waste, the above 43% correspond to 1,300 cases. For manure the 2.84% share represents a total of 86 cases. In the category of licences, 389 cases were recorded, or a total of 12.87%. In relation to emissions 853 cases were recorded. For nature protection, a total of 395 cases were recorded after 25 June 2009 by the criminal divisions of the public prosecutors' offices of the Flemish Region.

This is clearly reflected in the table below.

Total	**Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region**	**3.023**
Nature protection	63A - Hunting	148
	63B - Fishing	61
	63M - Forest Decree	45
	63N - Washington Convention - protected animal species, plants and ivory	41
	64J - Nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements	100
	Total Nature protection	**395**
Air/Water/Soil/Noise (emissions)	64A - Air and water pollution	344
	64B - Carbon oxide (CO)	3
	64C - Noise nuisance, decibels in urban environment (Royal Act of 24 February 1977)	393
	64G - Illegal water abstraction	2
	64M - Surface water pollution	82
	64N - Groundwater pollution	29
	Total Air/Water/Soil/Noise	**853**
Licences	64D - Commodo-Incommodo	83
	64H - Operation of a nuisance-causing plant without a licence	53
	64I - Failure to comply with Vlarem legislation	253
	Total Licences	**389**
Manure	63I - Manure	39
	63O - Decree on Manure	47
	Total Manure	**86**
Waste	64E - Illegal dumping	887
	64F - Waste management	368
	64L - Importation and transit of waste	45
	Total Waste	**1.300**

Table 15) *Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region, according to the codes for charges, for cases after 1 May 2009 when it comes to environmental health law and cases after 25 June 2009 when it comes to nature protection law*

The table above gives an overview of the Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region between 1 May 2009 and 31 December 2009 for cases falling under *waste, manure, licences,* and *air/water/soil/noise (emissions)*, and between 25 June 2009 and 31 December 2009 for cases falling under *nature protection*. In the period of 2009 during which the Environmental Enforcement Decree was in force, the public prosecutors received a total of 3,023 Environmental Enforcement cases.

In 43% of these cases *waste* was the main charge code. More specifically, 29.34% of all Environmental Enforcement cases related to illegal dumping. This is a remarkable figure. From this it can be deduced that illegal dumping is the most frequently reported environmental offence.

A second large group are the charges falling under the heading *air/water/soil/noise (emissions)*, which represent 28.22% of all Environmental Enforcement cases. Most of these refer to noise nuisance and air and water pollution, with 13% and 11.38%, respectively, of all Environmental Enforcement cases.

Charges relating to licences and nature protection law make up 12.87% and 13.07%, respectively, of all Environmental Enforcement cases.

Charges falling under the headings *Manure* and *Decree on Manure* combined only make up a small share – as low as 2.84% – of all Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region between 1 May 2009 and 31 December 2009. However, this can be explained by the fact that in 2006, under the Decree on Manure, the Flemish Land Agency was made competent to issue some of its own administrative fines (see below).

4.1.2 State of progress

Besides the figures on the amount of Environmental Enforcement cases received, we were also able to obtain information on the state of progress of the Environmental Enforcement cases for the study period. However, it must be noted that the data collection took place on 10 January 2010. 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 2010.

NO FURTHER ACTION / DISMISSED

In cases where no further action is taken and 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 2010 had been referred to another public prosecutor or other (legal) institutions. As long as these referred cases are not returned to the public prosecutor of origin, they remain in this state of progress. In other words, for this public prosecutor they can be considered closed. They are reopened with a different reference number by the public prosecutor 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 not reached 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 decided to propose mediation to the parties involved in criminal cases. 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 2010 for the Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors of the Flemish Region after 1 May 2009 for cases related to environmental health law, and after 25 June 2009 for cases related to nature protection law. Both the total number of cases in Flanders and the number of cases per public prosecutor are given.

	Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices	Preliminary investigation		No further action		Case referred		Amicable settlement		Mediation in criminal cases		Investigation		Chambers		Writ of summons & further proceedings		Unknown/ error		Total percentage for row
		n	%	n	%	n	%	N	%	n	%	n	%	n	%	n	%	N	%	
Flanders	3.023	1.115	36,88%	1.250	41,35%	214	7,08%	315	10,42%	3	0,10%	32	1,06%	3	0,00	88	2,91%	3	0,10%	100,00%
Dendermonde	291	112	38,49%	118	40,55%	38	13,06%	12	4,12%	1	0,34%	0	0,00%	0	0,00	10	3,44%	0	0,00%	100,00%
Ghent	406	154	37,93%	106	26,11%	82	20,20%	23	5,67%	0	0,00%	24	5,91%	1	0,00	15	3,69%	1	0,25%	100,00%
Oudenaarde	96	42	43,75%	26	27,08%	2	2,08%	23	23,96%	0	0,00%	3	3,13%	0	0,00	0	0,00%	0	0,00%	100,00%
Bruges	319	138	43,26%	163	51,10%	1	0,31%	12	3,76%	0	0,00%	1	0,31%	0	0,00	4	1,25%	0	0,00%	100,00%
Ypres	103	47	45,63%	45	43,69%	8	7,77%	0	0,00%	0	0,00%	0	0,00%	0	0,00	3	2,91%	0	0,00%	100,00%
Kortrijk	328	127	38,72%	153	46,65%	21	6,40%	11	3,35%	1	0,30%	0	0,00%	0	0,00	13	3,96%	2	0,61%	100,00%
Veurne	88	43	48,86%	26	29,55%	7	7,95%	2	2,27%	0	0,00%	0	0,00%	0	0,00	10	11,36%	0	0,00%	100,00%
Antwerp	250	70	28,00%	75	30,00%	15	6,00%	69	27,60%	0	0,00%	2	0,80%	0	0,00	19	7,60%	0	0,00%	100,00%
Mechelen	104	32	30,77%	46	44,23%	2	1,92%	20	19,23%	0	0,00%	1	0,96%	0	0,00	3	2,88%	0	0,00%	100,00%
Turnhout	262	69	26,34%	131	50,00%	5	1,91%	51	19,47%	0	0,00%	0	0,00%	0	0,00	6	2,29%	0	0,00%	100,00%
Hasselt	160	55	34,38%	79	49,38%	5	3,13%	18	11,25%	1	0,63%	0	0,00%	0	0,00	2	1,25%	0	0,00%	100,00%
Tongeren	228	47	20,61%	115	50,44%	24	10,53%	39	17,11%	0	0,00%	1	0,44%	1	0,00	1	0,44%	0	0,00%	100,00%
Leuven	161	55	34,16%	66	40,99%	2	1,24%	35	21,74%	0	0,00%	0	0,00%	1	0,01	2	1,24%	0	0,00%	100,00%
Brussels	227	124	54,63%	101	44,49%	2	0,88%	0	0,00%	0	0,00%	0	0,00%	0	0,00	0	0,00%	0	0,00%	100,00%

Table 16) *Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region between 1 May 2009 and 31 December 2009 and state of progress as at 10 January 2010 per category of charges*

In the table above it can be seen that more than one third of all Environmental Enforcement cases in the study period in Flanders were still in the preliminary investigation stage on 10 January 2010. However, in most of these cases – concretely 41.35 % – no further action was taken. In the next section we will take a closer look at the reasons for this 'absence of action'. 10.42% of cases was in the 'amicable settlement' state of progress, and 2.91% in the 'writ of summons' stage.

However, a number of regional differences are already apparent here.

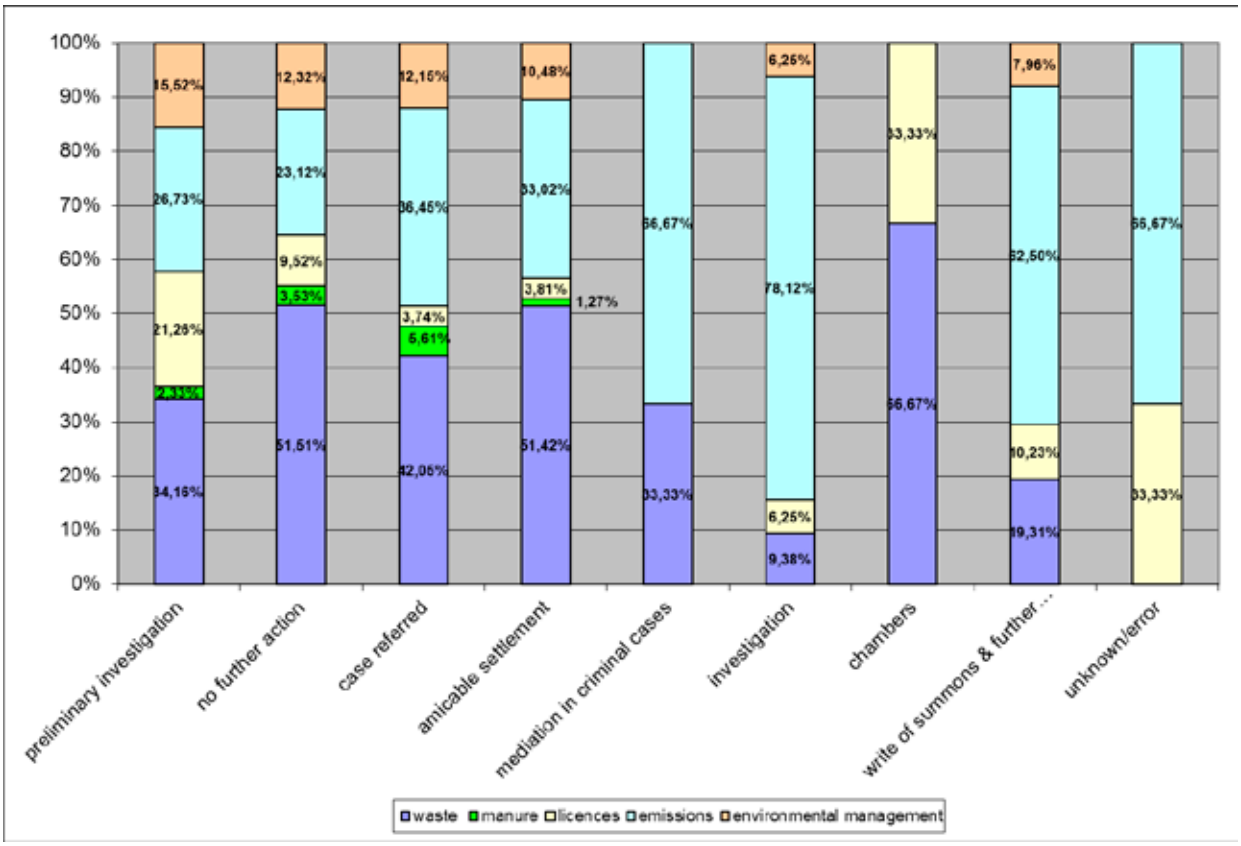
In terms of percentage, the public prosecutor's offices of Bruges, Turnhout and Tongeren took no further action in more than half of all Environmental Enforcement cases in Flanders during the study period. The public prosecutor of Veurne recorded the largest number of writs of summons. In 11.36% of Environmental Enforcement cases recorded by the public prosecutor's office of Veurne after 1 May 2009 a writ of summons had already been issued. This exceeds by far the Flemish average of 3%. However, it must be noted that the public prosecutor's office of Veurne recorded the lowest number of Environmental Enforcement cases during the study period. In Oudenaarde and Brussels, on the other hand, no writs of summons had been issued yet for these cases.

In Antwerp, as at 10 January 2010, an amicable settlement had been proposed for 27.60% of all Environmental Enforcement cases recorded after 1 May 2009, on a total of 69 cases.

Generally speaking, it can be said that, as at 10 January 2010, at least 20% of all cases recorded after 1 May 2009 (and after 25 June 2009 when it comes to nature protection) were still in the preliminary investigation stage, whereas in at least 26% of 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 Ypres referring to environmental health and nature protection law have been processed by the public prosecutor of Kortrijk. This is the result of a cooperation agreement between both public prosecutors in the areas of environment/urban development (Kortrijk), on the one hand, and hormones/food safety (Ypres), on the other. An exception to this are the so-called 'liveability offences' (such as infringements against the regulations on river fishing, the Forest Decree, animal welfare, noise nuisance, illegal dumping, etc.). These therefore continue to fall under the public prosecutors that are competent for each area. The relevant codes for these 'liveability offences' are 63B, 63M, 64C and 64E.

The graph below reflects, *per state of progress*, the share of the different categories of codes for charges (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, no further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons & further proceedings, unknown/error).



Graph 47) *State of progress as at 10 January 2010 for Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region between 1 May 2009 and 31 December 2009 according to the share of the category of charges (waste, manure, licences, emissions and nature protection)*

This shows that more than half of all cases in which no further action would be taken referred to waste. Only 3.53% of cases in which no further action would be taken referred to manure. It is also remarkable that in none of the cases relating to manure a writ of summons had been issued as at 10 January. The majority of cases in which a writ of summons had been issued – 62.50% – referred to emissions (air/water/soil/noise).

More than half of all cases in which the public prosecutor proposed an amicable settlement referred to waste.

The table and graph below paint a picture, *per charge code*, of the state of progress (preliminary investigation, no further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons & further proceedings, unknown/error) of the cases falling under each code as at 10 January 2010. The states of progress (preliminary investigation, no further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons & further proceedings, unknown/error) were compared to a reference value equal to 100 for each category of charges (waste, manure, licences, emissions and nature protection).

Graph 48) *Categories of charges (waste, manure, licences, emissions and nature protection) for Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region between 1 May 2009 and 31 December 2009 and between 25 June 2009 and 31 December 2009 according to the share of the state of progress as at 10 January 2010 per category of charges*

	waste	manure	licences	emissions	nature protection
preliminary investigation	29,31%	30,23%	60,93%	34,94%	43,80%
no further action	49,53%	51,16%	30,59%	33,88%	38,99%
case referred	6,92%	13,95%	2,06%	9,14%	6,58%
amicable settlement	12,46%	4,66%	3,08%	12,19%	8,35%
mediation in criminal cases	0,09%	0,00%	0,00%	0,24%	0,00%
investigation	0,23%	0,00%	0,51%	2,93%	0,51%
chambers	0,15%	0,00%	0,26%	0,00%	0,00%
write of summons & further proceedings	1,31%	0,00%	2,31%	6,45%	1,77%
unknown/error	0,00%	0,00%	0,26%	0,23%	0,00%
total	**100,00%**	**100,00%**	**100,00%**	**100,00%**	**100,00%**

Table 17) *Categories of charges (waste, manure, licences, emissions and nature protection) for Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region between 1 May 2009 and 31 December 2009 and between 25 June 2009 and 31 December 2009 according to the share of the state of progress as at 10 January 2010 per category of charges*

Like the graph above, this table confirms that most cases in which no further action would be taken referred to waste. In nearly half (49.53%) of all cases relating to waste it was decided that no further action would be taken, whereas in only 1.31% of cases a writ of summons had been issued as at 10 January 2010, and in 12.46% (162 cases) an amicable settlement had been proposed. On the reference

date nearly 30% of these cases were still in the preliminary investigation stage. However, what is really remarkable is that these cases constitute the majority of cases recorded by the public prosecutors (43%).

A similar situation can be found for cases relating to charges related to manure. Here as well, more than 30% of cases were in the preliminary investigation stage as at 10 January 2010, and more than half had been dismissed without further action. 12 of the total of 86 cases had been referred to another public prosecutor or another (legal) institution. In four cases related to manure an amicable settlement had been proposed.

Most cases relating to licences, namely 237 cases, or nearly 61%, were still in the preliminary investigation stage on the date of the data collection. Here as well, approximately 30% of cases had been dismissed. A writ of summons had been issued in only 2.31% of cases (i.e. 9 cases).

Approximately 34% of cases relating to air/water/soil/noise had been dismissed without further action. However, this is where the highest percentage of writs of summons was recorded: in 6.45% of emissions cases a writ of summons had been issued as at 10 January. In 12.19%, or 104 emissions cases, an amicable settlement had been proposed.

For cases relating to nature protection a similar situation can be observed. On the reference date 173 of the 395 cases were still in the preliminary investigation stage, while 154 cases had already been dismissed. In 33 cases an amicable settlement had been proposed, and in only 7 cases a writ of summons had already been issued.

While it was found that on 10 January the majority of cases were still in the preliminary investigation stage, an overall conclusion is that at least around 30%, up to approximately 50%, of cases relating to environmental enforcement had been dismissed without further action by the public prosecutors of the Flemish Region. In the next section we will therefore pay 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 prosecutors in the Flemish Region were added up. We have mentioned that at least around 30%, and up to a maximum of approximately 50% of cases relating to environmental enforcement were dismissed without further action by the public prosecutors of the Flemish Region. However, this figure must be placed in its right context. We must take into account the fact that a large number of cases received by the public prosecutors 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 one should look at the 'prosecutable cases'. For Environmental Enforcement cases recorded by the public prosecutors after 1 May 2009 (and after 25 June for nature protection cases) these would amount to 2,323 prosecutable cases, instead of 3,023. This way, the results of the calculations would be that an amicable settlement had already been proposed in 13.56% of recorded cases instead of 10.42% as stated above, and that a writ of summons had already been issued in 3.79% of cases instead of 2.91%.

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 prosecutors of the Flemish Region after 1 May 2010 (and after 25 June when it comes to nature protection cases). The total then amounts to 1,905 cases, with the percentages of cases in which an amicable settlement has been proposed and cases in which a writ of summons has been issued being 16.54% and 4.62%, respectively.

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 2010 at least 30% and up to approximately 50% of cases had already been dismissed without further action by the public prosecutors of the Flemish Region. However, the Flemish High Council of Environmental Enforcement was provided with figures that further clarified these cases that were dismissed without further action.

In relation to cases that are dismissed 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 law of 12 March 1998, obliges public prosecutors to provide reasons for their decisions. Public prosecutors have a refined list of reasons for 'no 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 law 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 were dismissed for technical reasons could be regarded as dismissals based on the principle of opportunity.

The table below illustrates the types of 'no further action' (dismissal based on the principle of opportunity, technical dismissal and other reason for dismissal) reported by the different public prosecutors in the Flemish Region, compared to all Environmental Enforcement cases which were in the 'no further action' state of progress on 10 January 2010. The figures received allow us to illustrate the reason for the state of 'no of further action' of Environmental Enforcement cases in 2009, both before and after the coming into force of the Environmental Enforcement Decree on 1 May 2009.

However, it must be pointed out that it is really too early to draw conclusions on the basis of the data collected on 10 January 2010 about the extent to which cases are processed differently before and after the coming into force of the Environmental Enforcement Decree. Even so, we will try to identify some trends.

	Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices in 2009		Cases processed in 2009 – no further action				Dismissals based on the principle of opportunity				Technical dismissals				Dismissals for other reasons				Unknown/error			
	Before EEA	After EEA	Before EEA		After EEA		Before EEA		After EEA		Before EEA		After EEA		Before EEA		After EEA		Before EEA		After EEA	
			n	%	n	%	n	%	N	%	n	%	n	%	n	%	n	%	n	%	n	%
Flanders	3.139	3.023	1.607	51,19%	1.250	41,35%	791	49,22%	446	35,68%	692	43,06%	486	38,88%	123	7,65%	318	25,44%	1	0,06%	0	0,00%
Dendermonde	310	291	144	46,45%	118	40,55%	57	39,58%	22	18,64%	57	39,58%	32	27,12%	30	20,83%	64	54,24%	0	0,00%	0	0,00%
Ghent	404	406	171	42,33%	106	26,11%	47	27,49%	26	24,53%	118	69,01%	68	64,15%	6	3,51%	12	11,32%	0	0,00%	0	0,00%
Oudenaarde	82	96	29	35,37%	26	27,08%	12	41,38%	9	34,62%	12	41,38%	9	34,62%	5	17,24%	8	30,77%	0	0,00%	0	0,00%
Bruges	308	319	196	63,64%	163	51,10%	180	91,84%	135	82,82%	16	8,16%	28	17,18%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
Ypres	95	103	49	51,58%	45	43,69%	15	30,61%	9	20,00%	34	69,39%	21	46,67%	0	0,00%	15	33,33%	0	0,00%	0	0,00%
Kortrijk	246	328	116	47,15%	153	46,65%	53	45,69%	25	16,34%	59	50,86%	70	45,75%	4	3,45%	58	37,91%	0	0,00%	0	0,00%
Veurne	93	88	42	45,16%	26	29,55%	22	52,38%	6	23,08%	16	38,10%	13	50,00%	4	9,52%	7	26,92%	0	0,00%	0	0,00%
Antwerp	323	250	110	34,06%	75	30,00%	47	42,73%	20	26,67%	46	41,82%	24	32,00%	17	15,45%	31	41,33%	0	0,00%	0	0,00%
Mechelen	242	104	165	68,18%	46	44,23%	83	50,30%	15	32,61%	75	45,45%	22	47,83%	6	3,64%	9	19,57%	1	0,61%	0	0,00%
Turnhout	291	262	135	46,39%	131	50,00%	34	25,19%	20	15,27%	92	68,15%	59	45,04%	9	6,67%	52	39,69%	0	0,00%	0	0,00%
Hasselt	137	160	69	50,36%	79	49,38%	30	43,48%	29	36,71%	33	47,83%	43	54,43%	6	8,70%	7	8,86%	0	0,00%	0	0,00%
Tongeren	188	228	114	60,64%	115	50,44%	65	57,02%	55	47,83%	48	42,11%	47	40,87%	1	0,88%	13	11,30%	0	0,00%	0	0,00%
Leuven	171	161	84	49,12%	66	40,99%	25	29,76%	13	19,70%	49	58,33%	41	62,12%	10	11,90%	12	18,18%	0	0,00%	0	0,00%
Brussels	249	227	183	73,49%	101	44,49%	121	66,12%	62	61,39%	37	20,22%	9	8,91%	25	13,66%	30	29,70%	0	0.00%	0	0,00%

Table 18) *Per public prosecutor, number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region in 2009 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)*

For the 1,250 Environmental Enforcement cases recorded by the public prosecutors' offices in the Flemish Region after 1 May 2009, it can be observed that more than 30% of 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, or the situation had already been regularised.

However, significant regional differences can be observed. For instance, the public prosecutor of Bruges dismissed more than 42% of the Environmental Enforcement cases recorded after 1 May 2009 based on the principle of opportunity. More than 70% of these 135 cases were dismissed due to the limited consequences for society. In Turnhout only 7% of all Environmental Enforcement cases were dismissed based on the principle of opportunity.

In total, nearly 40% of all Environmental Enforcement cases in which no further action was taken were **dismissed for technical reasons.** The concrete reason was usually that insufficient proof could be provided, or that the offenders were unknown. 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 offender remains unknown because it is decided, based on the principle of opportunity, not to identify the offender. This is because the detriment caused by the offence is often disproportionate to the costs of tracing the offender.

Obviously, it is important in the framework of the Environmental Enforcement Decree to study whether there is already an impact of the choice given to public prosecutors in the decree to refer cases relating to environmental offences to the Environmental Enforcement, Environmental Damage and Crisis Management Division.

The figures above make it clear that a trend can already be discerned. Globally speaking, the number of Environmental Enforcement cases that were dismissed for 'other reasons' in Flanders in 2009 was 7.65% before 1 May, and amounted to 25.44% after that date. It is precisely this type of dismissals 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 before the coming into force of the Environmental Enforcement Decree 5.97% of all Environmental Enforcement cases were dismissed without further action with the intention of imposing an administrative fine. After 1 May, this share rose to 23.92% of all Environmental Enforcement cases in which no further action was taken. This is an increase by nearly 18 percentage points[52]. In total, this means that nearly 10% of all Environmental Enforcement cases recorded by the public prosecutors in the Flemish Region after 1 May 2009 (and after 25 June 2009 for cases relating to nature protection) were dismissed with a view to the imposition of an administrative fine. Before the coming into force of the Environmental Enforcement Decree, in the period from 1 January 2009 to 30 April 2009, this was only 2.96%.

Despite the fact that the decree was only in force for seven months during the study period, this increase can be considered remarkable.

However, here as well regional differences can be observed. For instance, during the study period the public prosecutors of Antwerp and Dendermonde dismissed 41.33% (31 cases) and 54,24% (64 cases), respectively, of all cases in which no further action was taken for 'other reasons'. In Antwerp 22 cases

[52] If, over time, a lot of the cases recorded by public prosecutors after the coming into force of the Environmental Enforcement Decree are dismissed, the percentage of the administrative fine will be lower than the current 23.92%. Conversely, it is also possible that the percentage of administrative fines will still increase. As the data for this report were collected on 10 January 2010, these figures should be interpreted with caution.

were dismissed with a view to the imposition of an administrative fine. In Dendermonde this occurred in 63 cases. This means that 21.64% of all Environmental Enforcement cases recorded by the public prosecutor of Dendermonde after 1 May 2009 were dismissed with a view to the imposition of an administrative fine. This percentage is far higher than the average, which is almost 10%.

In locations such as Bruges and Hasselt, on the other hand, these figures were significantly lower. Bruges did not dismiss any cases at all for 'other reasons', and hence with a view to the imposition of an administrative fine. In Hasselt only 4.38% of all Environmental Enforcement cases that were recorded after 1 May 2009 were dismissed with a view to the imposition of an administrative fine. This percentage is far below the average of 10%.

In the table below the reasons for dismissal are indicated for each of the categories of charges (waste, manure, licences, emissions and nature protection), and this both before and after the coming into force of the Environmental Enforcement Decree in 2009. This allows us to get an idea of which types of cases are dismissed for which reasons, and how the Environmental Enforcement Decree could have influenced this.

		Waste				Manure				Licences				Air/water/soil/noise (emissions)				Nature protection law				Total			
		dating from before 1 May 2009		dating from after 1 May 2009		dating from before 1 May 2009		dating from after 1 May 2009		dating from before 1 May 2009		dating from after 1 May 2009		dating from before 1 May 2009		dating from after 1 May 2009		dating from before 25 June 2009		dating from after 25 June 2009		dating from before 1 May 2009		dating from after 1 May 2009	
		n	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%	*n*	%
Opportunity	(1) limited consequences for society	112	12,43%	62	9,63%	**11**	22,45%	12	27,27%	8	7,69%	6	5,04%	43	13,07%	29	10,03%	20	8,93%	32	20,78%	194	12,07%	141	11,28%
	(2) situation regularised	100	11,10%	45	6,99%	**2**	4,08%	1	2,27%	45	43,27%	19	15,97%	40	12,16%	30	10,38%	26	11,61%	5	3,25%	213	13,25%	100	8,00%
	(3) relational offence	3	0,33%	2	0,31%	**0**	0,00%	0	0,00%	0	0,00%	1	0,84%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	3	0,19%	3	0,24%
	(4) limited detriment	5	0,55%	3	0,47%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	1	0,30%	1	0,35%	1	0,45%	3	1,95%	7	0,44%	7	0,56%
	(5) reasonable term exceeded	51	5,66%	26	4,04%	**0**	0,00%	0	0,00%	6	5,77%	10	8,40%	5	1,52%	3	1,04%	1	0,45%	1	0,65%	63	3,92%	40	3,20%
	(6) lack of precedent	17	1,89%	16	2,48%	**0**	0,00%	0	0,00%	1	0,96%	1	0,84%	10	3,04%	6	2,08%	10	4,46%	11	7,14%	38	2,36%	34	2,72%
	(7) chance events with cause	29	3,22%	28	4,35%	**3**	6,12%	1	2,27%	8	7,69%	2	1,68%	34	10,33%	24	8,30%	15	6,70%	4	2,60%	89	5,54%	59	4,72%
	(9) disproportion criminal proceedings - social disruption	41	4,55%	7	1,09%	**0**	0,00%	0	0,00%	2	1,92%	1	0,84%	19	5,78%	16	5,54%	8	3,57%	0	0,00%	70	4,36%	24	1,92%
	(10) victim's attitude	1	0,11%	1	0,16%	**0**	0,00%	0	0,00%	1	0,96%	0	0,00%	1	0,30%	0	0,00%	0	0,00%	0	0,00%	3	0,19%	1	0,08%
	(11) compensation to the victim	28	3,11%	5	0,78%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	2	0,61%	1	0,35%	0	0,00%	0	0,00%	30	1,87%	6	0,48%
	(12) insufficient investigation capacity	19	2,11%	3	0,47%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	2	0,89%	0	0,00%	21	1,31%	3	0,24%
	(13) other priorities	20	2,22%	12	1,86%	**1**	2,04%	0	0,00%	6	5,77%	1	0,84%	13	3,95%	9	3,11%	20	8,93%	6	3,90%	60	3,73%	28	2,24%
	Total category	***426***	***47,28%***	***210***	***32,61%***	***17***	***34,69%***	***14***	***31,82%***	***77***	***74,04%***	***41***	***34,45%***	***168***	***51,06%***	***119***	***41,18%***	***103***	***45,98%***	***62***	***40,26%***	***791***	***49,22%***	***446***	***35,68%***
Technical	(15) no offence	33	3,66%	25	3,88%	**2**	4,08%	1	2,27%	9	8,65%	6	5,04%	35	10,64%	47	16,26%	8	3,57%	11	7,14%	87	5,41%	90	7,20%
	(16) insufficient proof	273	30,30%	156	24,22%	**4**	8,16%	0	0,00%	11	10,58%	10	8,40%	54	16,41%	59	20,42%	51	22,77%	12	7,79%	393	24,46%	237	18,96%
	(17) limitation	0	0,00%	0	0,00%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	3	1,34%	0	0,00%	3	0,19%	0	0,00%
	(18) death of the offender	1	0,11%	1	0,16%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	0,45%	0	0,00%	2	0,12%	1	0,08%
	(21) incompetence	3	0,33%	0	0,00%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	1	0,30%	0	0,00%	1	0,45%	1	0,65%	5	0,31%	1	0,08%
	(22) final judgement	1	0,11%	0	0,00%	**0**	0,00%	0	0,00%	1	0,96%	1	0,84%	4	1,22%	1	0,35%	0	0,00%	1	0,65%	6	0,37%	3	0,24%
	(26) offender(s) unknown	100	11,10%	90	13,98%	**1**	2,04%	0	0,00%	0	0,00%	0	0,00%	42	12,77%	38	13,15%	53	23,66%	26	16,88%	196	12,20%	154	12,32%
	Total category	***411***	***45,62%***	***272***	***42,24%***	***7***	***14,29%***	***1***	***2,27%***	***21***	***20,19%***	***17***	***14,29%***	***136***	***41,34%***	***145***	***50,17%***	***117***	***52,23%***	***51***	***33,12%***	***692***	***43,06%***	***486***	***38,88%***
Other	(28) administrative fine	38	4,22%	143	22,20%	**25**	51,02%	29	65,91%	5	4,81%	61	51,26%	25	7,60%	25	8,65%	3	1,34%	41	26,62%	96	5,97%	299	23,92%
	(29) Praetorian probation	1	0,11%	2	0,31%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	0,45%	0	0,00%	2	0,12%	2	0,16%
	(30) signalling of the offender	24	2,66%	17	2,64%	**0**	0,00%	0	0,00%	1	0,96%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	25	1,56%	17	1,36%
	Total category	***63***	***6,99%***	***162***	***25,16%***	***25***	***51,02%***	***29***	***65,91%***	***6***	***5,77%***	***61***	***51,26%***	***25***	***7,60%***	***25***	***8,65%***	***4***	***1,79%***	***41***	***26,62%***	***123***	***7,65%***	***318***	***25,44%***
Unknown/ error		1	0,11%	0	0,00%	**0**	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	0,06%	0	0,00%
	Total category	***1***	***0,11%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***0***	***0,00%***	***1***	***0,06%***	***0***	***0,00%***
Total		**901**	**100,00%**	**644**	**100,00%**	**49**	**100,00%**	**44**	**100,00%**	**104**	**100,00%**	**119**	**100,00%**	**329**	**100,00%**	**289**	**100,00%**	**224**	**100,00%**	**154**	**100,00%**	**1.607**	**100,00%**	**1.250**	**100,00%**

Table 19) *Per category of charges, number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices of the Flemish Region in 2009 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)*

Generally speaking, it can be said that the percentage of dismissals based on the principle of opportunity and the percentage of technical dismissals both decreased after 1 May 2009 in favour of the percentage of dismissals for other reasons, and, more specifically, in favour of dismissals with a view to the imposition of an administrative fine. Before 1 May 2009 the reason for dismissal was related to the principle of opportunity in nearly 50% of cases, and of a technical nature in 43% of cases. Only 6% of cases were dismissed with a view to the imposition of an administrative fine. Of all dismissed cases recorded after 1 May 2009 (and after 25 June for cases relating to nature protection) in nearly 36% no further action was taken for reasons related to opportunity, and in nearly 39% for technical reasons. What is remarkable is the increase in the number of cases that were dismissed with a view to the imposition of an administrative fine, which amounted to nearly 25% of cases in which no further action was taken. Hence, it can be concluded that the share, in terms of percentage, of cases 'in which no further action was taken' for reasons related to opportunity and technical reasons dropped in the period after the coming into force of the Environmental Enforcement Decree -. From this, it might be deduced that public prosecutors rather choose to dismiss cases with a view to the imposition of an administrative fine than opt for a dismissal based on the principle of opportunity or a technical dismissal.[53] However, it is remarkable that 20.78% of dismissed cases relating to nature protection law after 25 June 2010 were dismissed due to limited consequences for society, whereas before the coming into force of the Environmental Enforcement Decree for nature protection law this was only 8.93%. This remarkable increase only occurs in cases relating to nature protection law (and, to a lesser extent, cases relating to manure). However, what could be expected was that after the coming into force of the Environmental Enforcement Decree public prosecutors would dismiss less – not more – cases for this reason, for instance by referring more cases to AMMC.

If we look more specifically at the categories of charges for the Environmental Enforcement cases which were dismissed with a view to the imposition of an administrative fine, it can be observed that even before the coming into force of the Environmental Enforcement Decree more than 50% of cases related to manure in which no further action was taken were dismissed with a view to the imposition of an administrative fine. After the coming into force of the decree this percentage rose to nearly 66%. In the other categories this percentage also increased considerably. Only in the category of emissions no relevant increase can be observed. From this we could deduce that public prosecutors opt for subjecting these cases to criminal proceedings themselves. On 10 January 2010 only 34% of cases relating to emissions that were recorded by the public prosecutors after 1 May 2009 had been dismissed, in more than half of cases for technical reasons, because no offence could be identified, there was insufficient proof or the offenders were unknown.

Moreover, the table above allows us to calculate the percentage per category of dismissals of Environmental Enforcement cases recorded by the public prosecutors after 1 May 2009, and after 25 June 2009 for cases falling into the category of nature protection.

[53] When comparing the percentages above it must be taken into account that some cases relating to environmental infringements which have, in the meantime, been decriminalised previously did reach the public prosecutors and were recorded by them, whereas afterwards this was no longer the case. Therefore, some caution is required when comparing actions taken in cases received after 1 May 2010 or 25 June 2010 and cases received before those dates. The nature of the events in these two groups can vary, so the different decisions taken by public prosecutors could be the result of the different nature of the events instead of being a result of the new Environmental Enforcement Decree.

- waste: 1,300 cases were recorded, 644 of which were dismissed. This results in a dismissal ratio for this category of 49%. Most cases were dismissed for technical reasons, chiefly because insufficient proof could be provided or the offenders were unknown. However, it should be noted that waste makes up the largest category of cases received. 43% of cases recorded during the study period referred to waste. Hence, the highest dismissal ratio is found in the largest category of cases received. The question arises whether no alternative way of processing can be chosen here.
- manure: a total of 86 cases were recorded, 44 of which were dismissed. This results in a dismissal ratio for this category of 51%. However, it must be pointed out that the majority of cases were dismissed with a view to the imposition of an administrative fine.
- licences: a total of 389 cases were recorded, 119 of which were dismissed. This results in a dismissal ratio for this category of 31% as at 10 January 2010, which is the lowest dismissal ratio of all the different categories. Moreover, more than half of all cases were dismissed with a view to the imposition of an administrative fine. As a result, the percentage of cases relating to licences as at 10 January 2010 was, in fact, even lower, namely only 15%. The fact that the dismissal ratio was only 31% for this category may also be explained by the fact that this type of cases are most often in the preliminary investigation stage. It is possible that it takes public prosecutors longer to gain a clear insight into these cases.
- emissions: as we have already indicated above, the dismissal ratio for this category was only 34%.
- nature protection: a total of 395 cases were recorded, 154 of which were dismissed. This results in a dismissal ratio for this category of 39%. The majority of cases in this category were dismissed for reasons related to opportunity, usually due to their limited consequences for society.

In order to gain further insight into the figures above, it should be further studied which of the cases that were/are dismissed by the public prosecutors for technical and opportunity-related reasons may still be eligible for administrative processing by AMMC. Cases which could be considered here, for instance, are those dismissed by public prosecutors due to other priorities. Research into this matter could facilitate attunement between public prosecutors and AMMC and enhance enforcement. It would be interesting to know in how many cases public prosecutors explicitly decide to extend the 180-day period, as the danger exists that, in the absence of a timely decision or extension of the period, an administrative sanction is no longer possible, and no criminal proceedings are instituted either. In such case, the Environmental Enforcement Decree would overshoot the mark.

Chapter 4.2 contains, among other things, a discussion of the way in which AMMC deals with cases submitted to it by public prosecutors.

In the past, scientific research showed that public prosecutors only prosecuted a small share of the official reports referring to a breach of special criminal law; the number of dismissals was reported to be high in general, also for environmental cases.[54] Consequently, there was criticism of the fact that in 70 to 80% of all (environmental) inspections in which a breach was identified no direct enforcement action was taken.[55] Especially in the annual reports of the Environmental Inspectorate Division, criticism was expressed about the fact that even official reports that had been marked as priority were not always prosecuted. On average, for 62% of all official reports submitted by the Environmental Inspectorate

[54] See, for instance, Ponsaers, P. and Dekeulenaer, S., 'Met strafrecht tegen milieudelicten? Rol en functie van bijzondere inspectiediensten in de strijd tegen milieucriminaliteit', *Panopticon*, 2003, 250-265.

[55] See, for instance, Billiet, C. and Rousseau, S., 'De zachte rechtshandhaving in het bestuurlijke handhavingsspoor: de inspectiebeslissing en het voortraject van bestuurlijke sancties. Een rechtseconomische analyse', *Tijdschrift voor Milieurecht*, 2005, 10.

Division the case was dismissed.[56] The public prosecutors' attitude in itself was understandable: considering the scarce resources, criminal proceedings were instituted only in cases of more serious crime, but the fact that in many cases no (further) action (such as an amicable settlement or another way of processing the case) was taken at all can be regarded as potentially problematic.

From the (limited) figures that are available now it can be deduced that cases are still being dismissed, but that at least the use of the alternative of administrative processing seems to be increasing. Obviously, based on these limited figures it is still too early to talk about a success of the Environmental Enforcement Decree, but at least public prosecutors are using the possibility offered by the Environmental Enforcement Decree to process cases using administrative procedures. However, huge regional differences can be observed. As will be explained below as well (see 4.2.1.1), the Environmental Enforcement, Environmental Damage and Crisis Management Division receives a large number of official reports from certain public prosecutors, whereas other public prosecutors (also larger ones, such as Brussels) hardly use this possibility. The fact that important differences still exist between the public prosecutors when it comes to the prosecution of environmental offences should continue to be given further attention, because this could put at risk the uniformity in the prosecution of environmental offences, and consequently that of environmental enforcement in the Flemish Region in general.

4.2 EVALUATION OF THE ADMINISTRATIVE SANCTIONS POLICY

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

DABM determines that exclusive and alternative administrative fines shall be imposed by AMMC. Given the important role assigned to this division, the regional authority was also asked about its activities in the framework of environmental enforcement.

AMMC started its activities at the beginning of May 2009. Hence, the entire framework for the division's activities still needed to be developed.

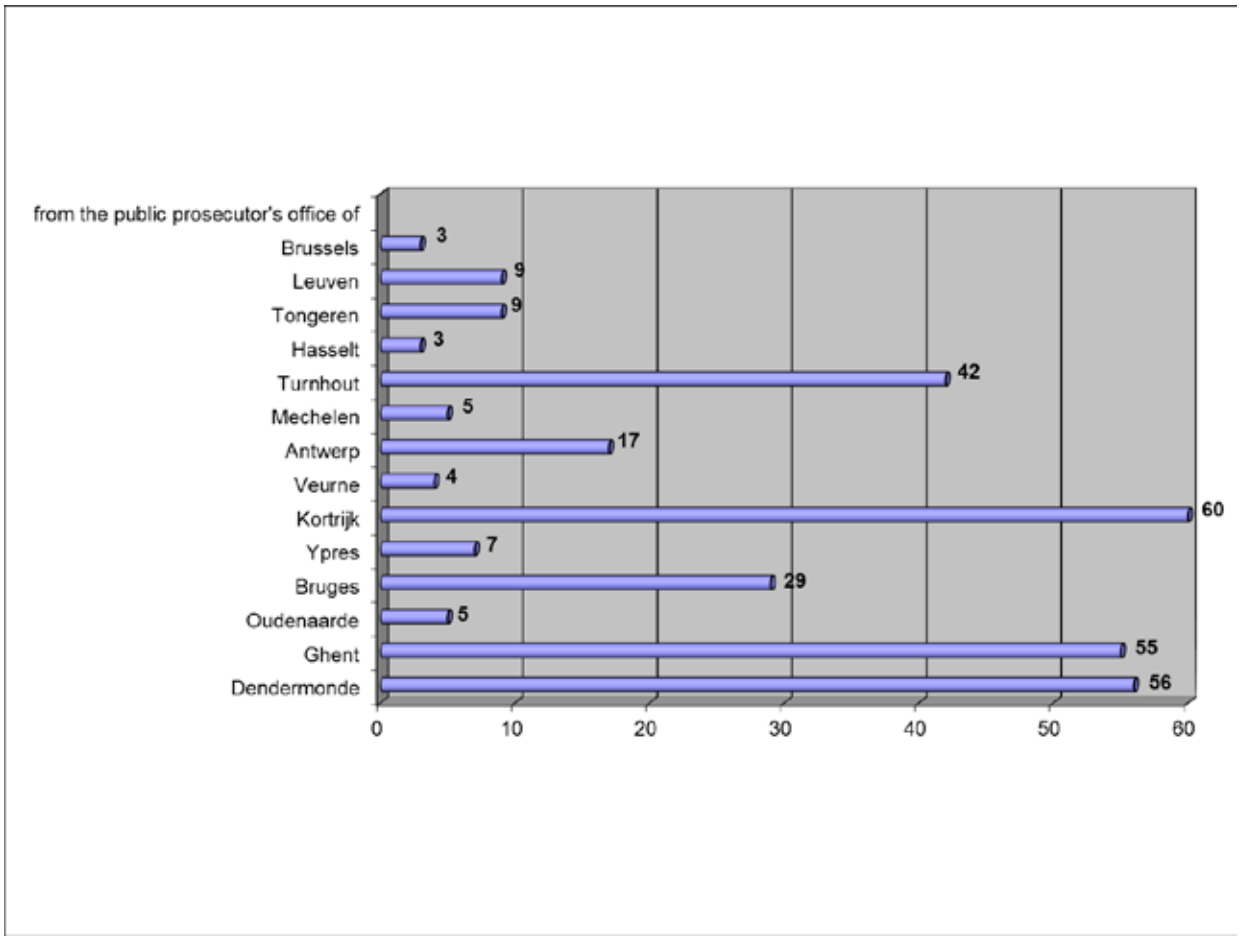
Consequently, the figures below only indicate a first trend, but do not offer conclusions. The VHRM will continue to follow AMMC's decisions closely with a view to the next environmental enforcement reports.

4.2.1.1 Processing of environmental offences

In the framework of the processing of environmental offences by AMMC between 1 May 2009 and 31 December 2009 it was asked how many official reports AMMC received from which public prosecutors.

The graph below indicates how many cases AMMC received from which public prosecutor in the Flemish Region.

[56] See Faure, M. and Svatikova, K., 'Enforcement of environmental law in the Flemish region', *European Energy & Environmental Law Review*, vol. 19 (2), 60-79.



Graph 49) Official reports received by AMMC from public prosecutors of the Flemish Region between 1 May 2009 and 31 December 2009

In total, the Environmental Enforcement, Environmental Damage and Crisis Management Division received 304 reports with a view to the imposition of alternative administrative fines.

The graph above confirms that there are regional differences in the number of cases submitted to AMMC by public prosecutors. Public prosecutors that stand out (positively) are those of Turnhout, Kortrijk, Ghent, Bruges and Dendermonde. These public prosecutors have already made good use of the possibilities offered by the Environmental Enforcement Decree.

A positive conclusion is that each public prosecutor submitted at least 3 cases to AMMC in 2009. The possibility of referring cases to AMMC has been discussed several times between AMMC and the public prosecutors. Consequently, this possibility of administrative sanctioning is fairly well-known, and has been used by various public prosecutors.

The figures in the section above show that on 10 January 2010 nearly 10% of all cases (299 cases) recorded by the public prosecutors after 1 May 2009 (and after 25 June 2009 for nature protection) had already been dismissed with a view to the imposition of an administrative fine. However, it should be noted that not all these cases had been submitted to the Environmental Enforcement, Environmental Damage and Crisis Management Division.

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 prosecutors between 1 May 2009 and 31 December 2009. It also shows the number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices in the Flemish Region between 1 May 2009 and 31

December 2009, for cases related to environmental health, and between 25 June 2009 and 31 December 2009, for cases related to nature protection. This allows us to calculate the shares of cases, in terms of percentage, that are submitted to the Environmental Enforcement, Environmental Damage and Crisis Management Division by each of the public prosecutors.

	Official reports received by AMMC from the public prosecutors	Number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors' offices	Share, in terms of percentage, of official reports referred to AMMC
Flanders	304	3.023	10,06%
Dendermonde	56	291	19,24%
Ghent	55	406	13,55%
Oudenaarde	5	96	5,21%
Bruges	29	319	9,09%
Ypres	7	103	6,80%
Kortrijk	60	328	18,29%
Veurne	4	88	4,55%
Antwerp	17	250	6,80%
Mechelen	5	104	4,81%
Turnhout	42	262	16,03%
Hasselt	3	160	1,88%
Tongeren	9	228	3,95%
Leuven	9	161	5,59%
Brussels	3	227	1,32%

Table 20) *Shares, in percentages, of cases received by the public prosecutors of the Flemish Region after 1 May 2009 and submitted to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy*

The table above clearly shows that 10% of all Environmental Enforcement cases recorded by the public prosecutors during the study period were submitted to AMMC with a view to the imposition of an alternative administrative fine. This seems to be a positive start for the possibilities offered by the Environmental Enforcement Decree for administrative processing.

Here as well, there are regional differences. For instance, the public prosecutor of Dendermonde referred nearly 20% of all Environmental Enforcement cases to AMMC with a view to the imposition of an alternative administrative fine, whereas in Brussels this occurred in only 1.32% of all Environmental Enforcement cases.

Even so, on the whole it can be concluded that shortly after the coming into force of the Environmental Enforcement Decree the public prosecutors of the Flemish Region were already using the possibility of referring cases to AMMC. In 4.1.3 'Reasons for dismissal' it was also concluded 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.[57]

In this context, it is important that the processing of these cases by the Environmental Enforcement, Environmental Damage and Crisis Management Division is studied in more depth.

For the 304 official reports received by AMMC in 2009 the decision period only expired at the beginning of 2010. This explains why AMMC did not yet impose any administrative fines in 2009. However, in 5 cases the division did find that the breaches did not fall under the scope of the Environmental Enforcement Decree, so that the procedure for the imposition of an administrative fine could not be initiated (e.g. due to the fact that the official report was drawn up before the coming into force of the Environmental Enforcement Decree, or because the offender was unknown, or because it concerned an environmental infringement instead of an environmental offence).

As we have mentioned earlier, public prosecutors have a maximum of 360 (180 + 180) days to decide whether the case will be referred to AMMC. As a result, we can say that the first official reports drawn up after 1 May 2009 and submitted with a view to the imposition of an alternative administrative fine only started to arrive to AMMC from mid June 2009 onwards. In addition, the regional body has a period of 30 days to inform the suspected offender of its intention to impose an alternative fine. Finally, DABM provides for a period of 180 days for AMMC to take a decision in the case. As a result, most decisions will be taken from 2010 onwards, and can therefore only be analysed in the Environmental Enforcement Report 2010.

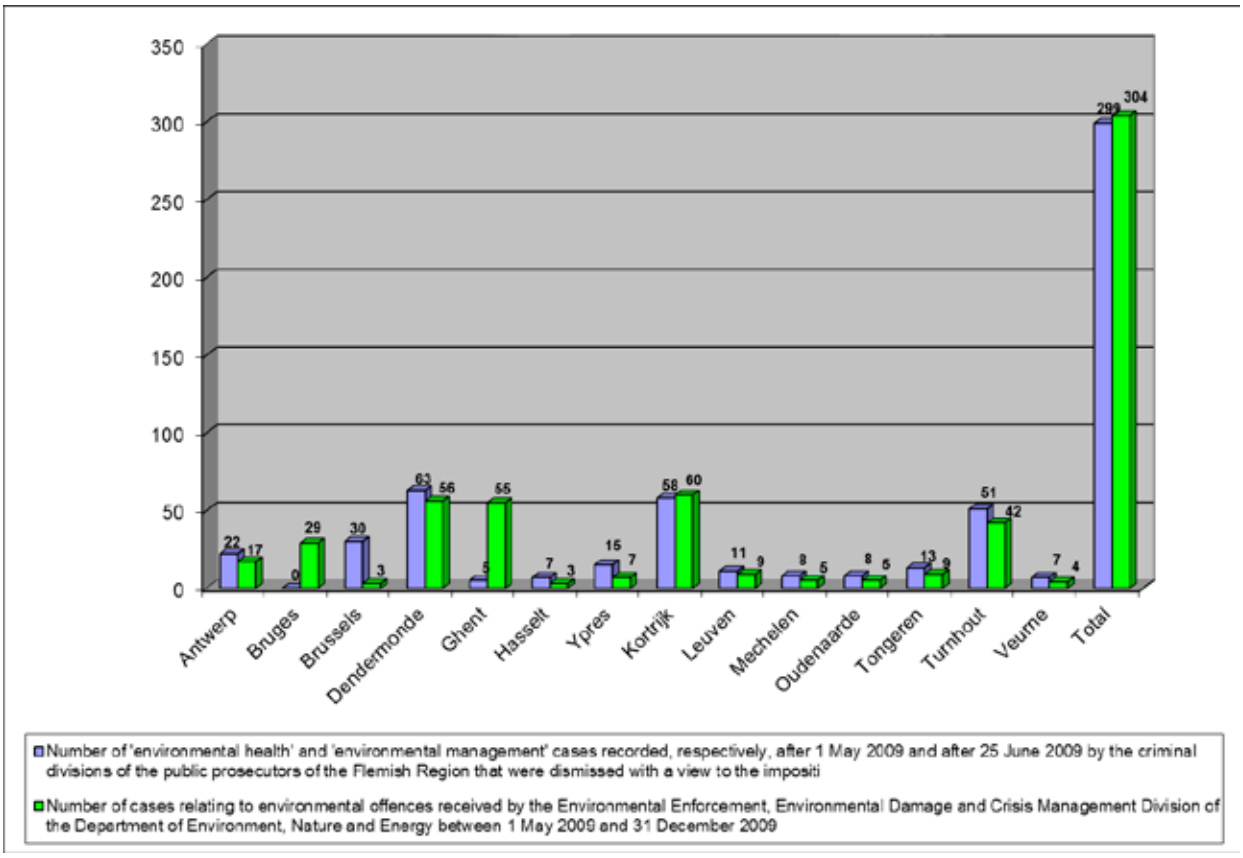
Moreover, it should be pointed out that this division was only created in May 2009. Preparations, such as the drawing up of criteria for decisions, grouped statements and criteria on the basis of which to take high quality, well-founded decisions, therefore still needed to take place.

Furthermore, enquiries were made into the nature of cases in which alternative fines were imposed, whether these were combined with a deprivation of benefits (within the set term) and what the nature of this possible deprivation of benefits was. As five decisions were taken in cases where no fine could be imposed, none of the information requested could be provided. In the Environmental Enforcement Report 2010 the Flemish High Council of Environmental Enforcement will be able to report on the nature of the official reports that are submitted to AMMC by the public prosecutors.

Note

The figures above referring to the number of cases submitted by the public prosecutors and received by the Environmental Enforcement, Environmental Damage and Crisis Management Division are based on the figures received by the Flemish High Council of Environmental Enforcement from the Environmental Enforcement, Environmental Damage and Crisis Management Division. When we compare these to the cases recorded after 1 May 2009 and 25 June 2009 (for cases relating to nature protection law) that were dismissed by the public prosecutors with a view to the imposition of an administrative fine according to the figures received by the VHRM from the public prosecutors, the picture is as follows:

[57] Billiet, C., De Smedt, P. and Van Landeghem, H., 'Vlaamse milieuhandhaving nieuwe stijl', *Tijdschrift voor Milieurecht*, 2009, 326-374.



Graph 50) *Number of 'environmental health' and 'nature protection' cases recorded, respectively, after 1 May 2009 and after 25 June 2009 by the criminal divisions of the public prosecutors of the Flemish Region that were dismissed with a view to the imposition of an administrative fine, 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 between 1 May 2009 and 31 December 2009*

As can be observed, there is a slight discrepancy between both sets of figures – not only in the total number, but also for the individual public prosecutors.

A possible explanation for this is the fact that the figures the Flemish High Council of Environmental Enforcement received from the public prosecutors refer to the date of the breach or the date of reception by the public prosecutor, on the one hand, and the last state of progress on 10 January 2010, on the other (see above). The figures the VHRM received from AMMC, however, refer to the exact period from 1 May 2009 to 31 December 2009. Therefore, there is a real possibility that between 1 and 10 January 2010 there were decisions to dismiss cases with a view to an administrative fine, and that these cases were not counted by AMMC as it only received them in 2010. This could even have occurred in cases submitted to AMMC by the public prosecutors with a view to the imposition of an alternative administrative fine at the end of December 2009.

The difference between the number of cases submitted with a view to the imposition of an administrative fine by the public prosecutor of Ghent (5) and the number of dossiers received by AMMC (55) can be explained by the fact that the public prosecutor of Ghent only used this reason for dismissal (dismissal with a view to the imposition of an administrative fine) when it concerned a municipal administrative sanction. The public prosecutor of Ghent used a specific registration method for cases submitted to AMMC with a view to the imposition of an administrative fine. These cases were 'referred' with a specific code. This occurred in 58 cases during the study period. The fact that three cases were not received could be explained by the note above about the small difference in the reference period.

However, for the public prosecutor of Bruges the public prosecutor database shows that, indeed, no cases were subjected to the procedure for the administrative fine during the study period. This reason for dismissal, or the corresponding destination of the referred cases, was not found at all.

Although there is only a small difference between the total numbers – the number of cases received by AMMC is higher than the number of cases dismissed by the public prosecutors with a view to the imposition of an administrative fine – in most cases the figures received from the public prosecutors are slightly higher than those provided by AMMC. This might, in part, be explained by the following causes:

- the selection of cases by the public prosecutors was made based on a specific list of codes for charges drawn up in consultation with the VHRM. From the moment a case was assigned one of these codes, this case was included in the count of cases of the public prosecutor. Hence, in theory, there is a possibility that the figures of the public prosecutors comprise cases which had been assigned other charge codes as well. These other codes could, in theory, have had a relatively higher 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, 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 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 with the reference number of the 'mother case'. It is possible (and logical) that AMMC may have treated these cases as a single case, whereas they were counted as several cases in the public prosecutors' figures, given that the decision refers to more than one case (at the level of the public prosecutor, cases are defined by means of a reference number; each initial official report results in the creation of one reference number);
- in theory, it is also possible that, at the level of the public prosecutors, certain cases relating to breaches committed before the coming into force of the Environmental Enforcement Decree were counted as well. Conversely, it is also possible that AMMC received certain cases that were received by the public prosecutors before 1 May 2009, and that it included these in its figures, whereas they were not included by the public prosecutors in their figures (see above: in the previous section it was found that 5 cases received by AMMC from the public prosecutors did not fall under the scope of DABM. A possible reason for this was that the official report was drawn up before the coming into force of the Environmental Enforcement Decree);
- 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 whereas they were submitted to AMMC.

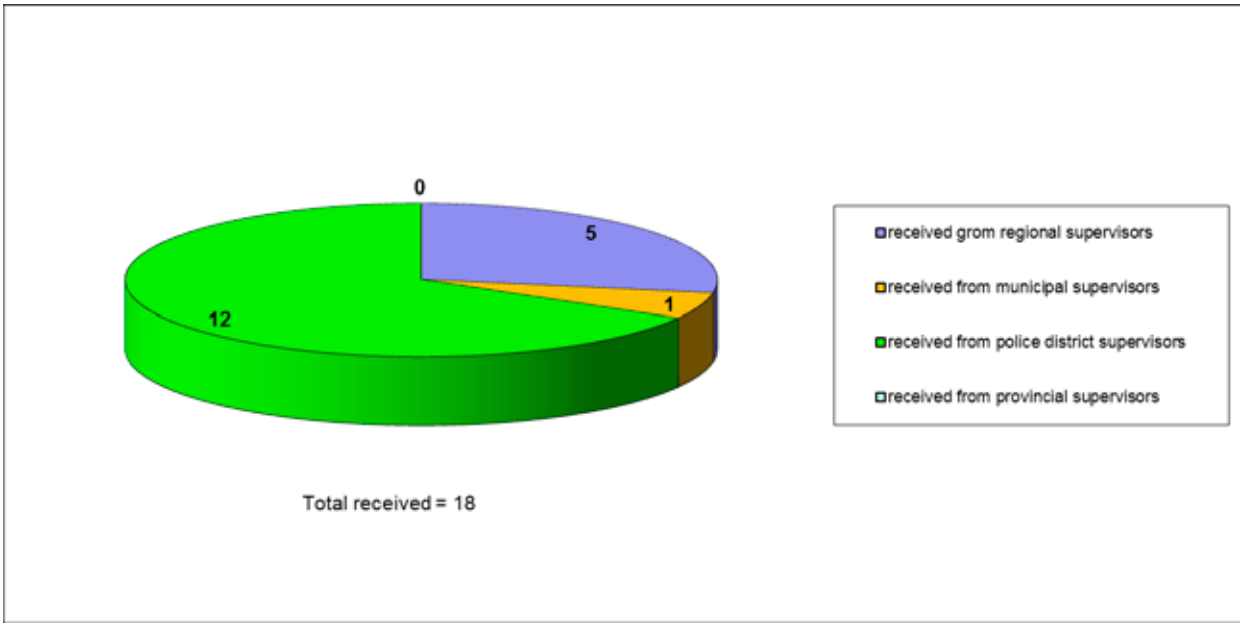
4.2.1.2 Processing of environmental infringements

The Flemish Government included 18 appendices with the Environmental Enforcement Act containing a limitative list of environmental infringements. These environmental infringements have been decriminalised.

The Environmental Enforcement, Environmental Damage and Crisis Management Division was therefore asked about the number of identification reports received between 1 May and 31 December 2009, about

whether these were drawn up by municipal, provincial, regional or police district supervisors, and about the nature[58] of the identification reports received.

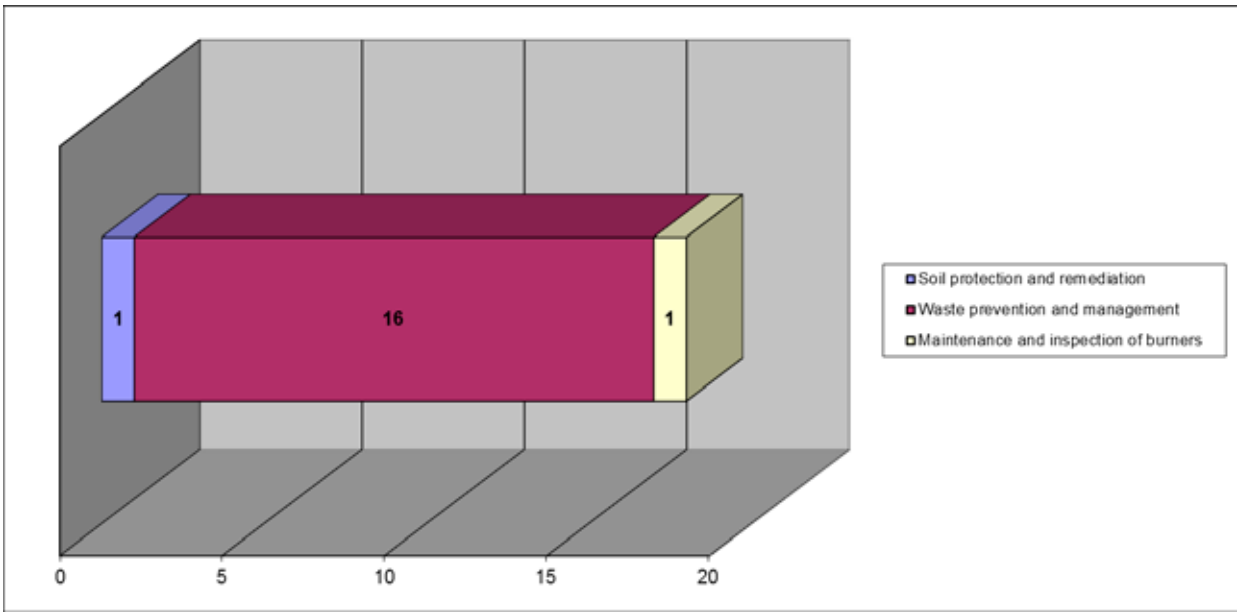
The graph below provides an overview of the number of identification reports AMMC received during the 2009 study period, subdivided by supervising actor.



Graph 51) *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 graph below provides an overview of the number of identification reports AMMC received during the 2009 study period, subdivided according to the nature of the infringement.

[58] According to the classification in the 18 Appendices to the Environmental Enforcement Act: company-internal environmental care; environmental impact and safety reporting; soil protection and remediation; noise research laboratories; groundwater management laboratories; water analysis laboratories; sectoral provisions on environmental health; waste prevention and management; maintenance and inspection of burners; certification of refrigeration companies; fire protection system; soil remediation; Forest Decree; Hunting Decree; ozone-depleting substances; Decree on surface minerals; fluorinated greenhouse gases; REACH.



Graph 52) *Identification reports received by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy, per topic*

Between 1 May 2009 and 31 December 2009 AMMC received 18 identification reports. Most of these reports had been drawn up by police district supervisors and referred to environmental infringements identified during waste shipments, e.g. incomplete identification forms, etc. AMMC is not under the obligation to start the procedure, so it may also decide to 'dismiss' certain infringements, and hence not impose a fine. AMMC did not make use of this possibility of dismissal in the 2009 study period.

A number of remarks can be made in relation to the above figures.

The instrument 'identification report', as was already found in Chapter 3.4, is clearly not completely known yet by all supervisors, and hence not integrated into their activities. This is also suggested by the limited number of identification reports drawn up in this context. However, it is still too early to draw conclusions, as the study period consisted of the first half year the decree was in force.

Another explanation could be that supervisors *may* draw up an identification report when they identify an environmental infringement[59], whereas they *are under the obligation* to draw up an official report when identifying an environmental offence[60]. In other words, supervisors have a 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. This is a possible subject for further study. 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 Decree on Manure have been included as environmental infringements in the Appendices to the Environmental Enforcement Act.

Another remarkable fact is that the identification reports drawn up relate to a limited number of topics, namely waste prevention and management, soil protection and remediation, and maintenance and inspection of burners. These fall under only 3 of the 18 categories of environmental infringements. An investigation may be desirable into the relevance of the provisions defining the environmental infringements included in the Appendices to the Environmental Enforcement Act. Another possibility is

[59] Article 16.3.22 of DABM

[60] Article 16.3.24 of DABM

that supervisors are made more familiar with the identification report as an instrument and with the breaches of environmental law that are classified as environmental infringements.

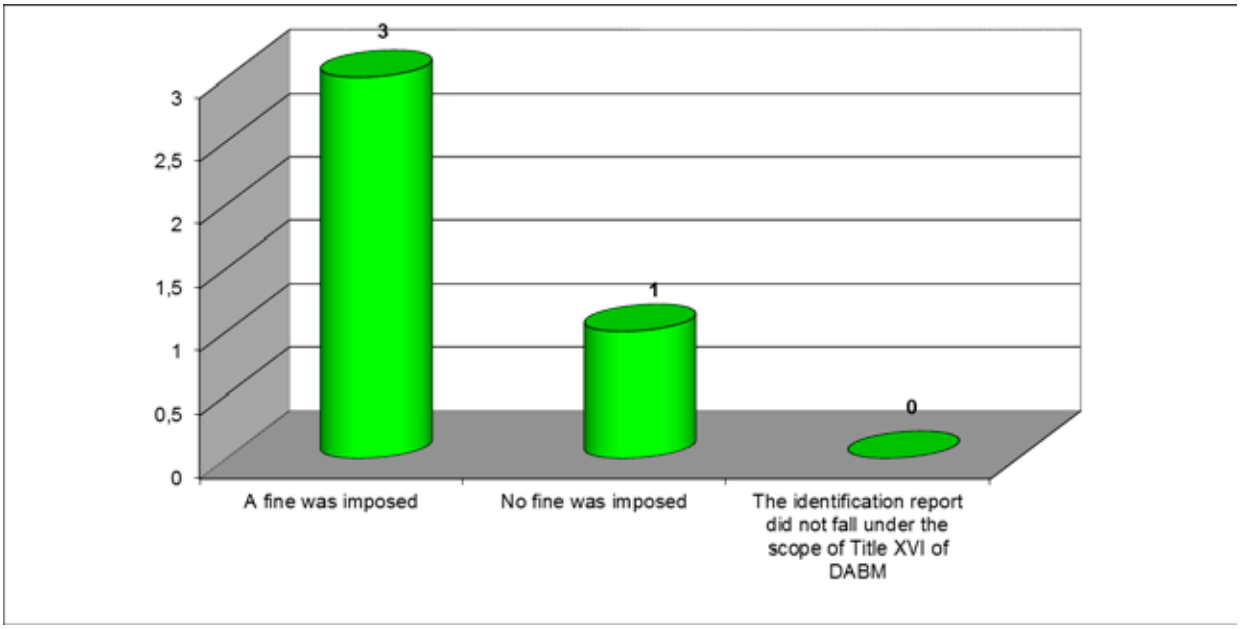
In Chapter 3 'Evaluation of the use of the individual environmental enforcement instruments and safety measures', it was mentioned in the section 'Evaluation of the instrument 'identification report'' that a total of 383 identification reports had been drawn up by supervisors between 1 May 2009 and 31 December 2009. Police districts reported having drawn up 50 identification reports during the study period and municipal supervisors a total of 326, whereas 1 regional enforcement actor drew up 7 identification reports during the 2009 study period.

However, AMMC reported having received, since 1 May 2009: 12 identification reports drawn up by local police supervisors, 1 identification report from a municipal supervisor, and 5 identification reports drawn up by regional supervisors.

In other words, there is a discrepancy between the number of identification reports drawn up and the number of identification reports received by 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 Decree, resulting in 'erroneous' information provided in the questionnaires. This matter clearly deserves further study within the VHRM, and both possible explanations deserve attention.

AMMC was also asked about the actions taken in relation to the identification reports received, and the framework within which an exclusive fine was imposed. This is reflected in the graph below.



Graph 53) *Decisions taken by the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy concerning exclusive administrative fines in the period between 1 May 2009 and 31 December 2009*

It was also asked to indicate which topics these exclusive fines referred to, according to the topics of the 18 Appendices to the Environmental Enforcement Act in which environmental infringements are listed.

In 4 of the 18 identification reports received a decision was taken. Three of these cases referred to waste prevention and management (incomplete identification form). The fourth referred to the maintenance and inspection of burners.

In three of these 4 cases exclusive administrative fines (without deprivation of benefits) were imposed, 2 of which were paid spontaneously in 2009. In 1 case no fine was imposed.

The limited number of decisions taken by the Environmental Enforcement, Environmental Damage and Crisis Management Division can, once again, be explained by the periods defined by the decree. 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, AMMC has to decide on the imposition of an exclusive administrative fine, whether or not accompanied by a deprivation of benefits. As these are only indicative periods, it can be expected that the remaining decisions will be taken in early 2010.

Once more, it should be pointed out that this division was newly created based on the Environmental Enforcement Decree. Hence, the framework for the imposition of exclusive administrative fines still needed to be developed.

4.2.2 Evaluation of decisions by the Environmental Enforcement Court

The Environmental Enforcement Court (MHHC) 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 between 1 May 2009 and 31 December 2009. It was asked about the number of appeals received against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division in the framework of both environmental offences and environmental infringements in the 2009 study period. It was also asked how these appeals were processed.

However, the Environmental Enforcement Court informed that it had not received any appeals against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division in the 2009 study period, whether referring to alternative administrative fines or exclusive administrative fines imposed.

This can be explained by the fact that the Environmental Enforcement, Environmental Damage and Crisis Management Division did not impose any alternative administrative fines during the 2009 study period. However, AMMC did impose 3 exclusive administrative fines. Offenders may lodge an appeal with the Environmental Enforcement Court within 30 days starting from the day following the notification of the regional body's decision.

In the 3 cases in which an exclusive administrative fine was imposed the offenders chose not to lodge an appeal with the Environmental Enforcement Court.

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 Flemish Land Agency (VLM) was given competence to impose administrative fines already with the coming into force of the decree of 22 December 2006 on the protection of water against agricultural nitrate pollution (generally known as the Decree on Manure).

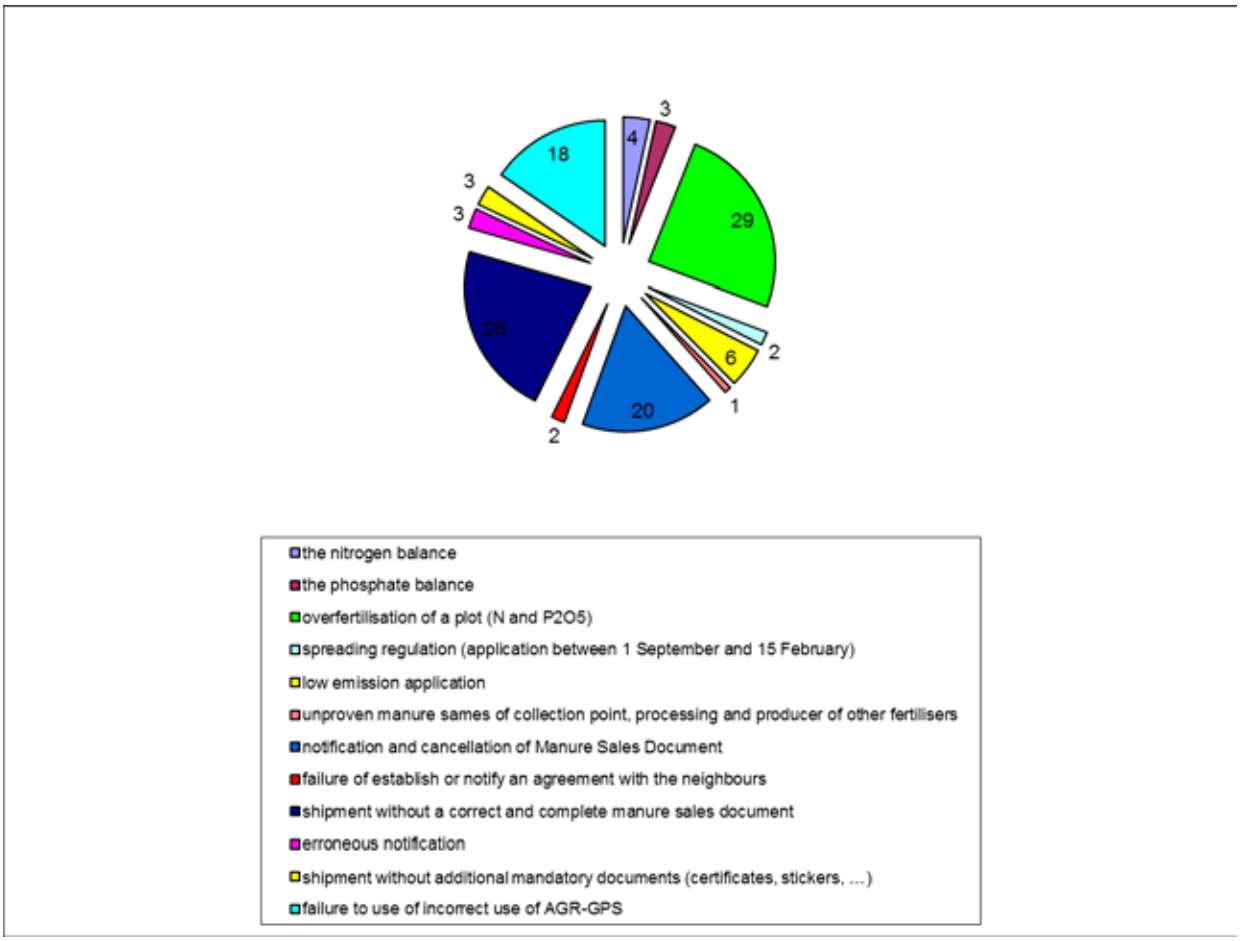
In its Article 63, the Decree on Manure provides a limitative list of infringements for which administrative fines can be imposed by VLM. The said article also defines the calculation of the amounts of the fines. Article 71 of the aforementioned decree stipulates for which infringements an official report 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 between 1 May 2009 and 31 December 2009 and the actions taken following these inspections, as described in Chapters 2 and 3, but also about the number of administrative fines imposed by VLM in the framework of the inspection reports drawn up by it and about the type of infringements these referred to[61].

The graph below illustrates the number of administrative fines imposed by VLM in the period between 1 May 2009 and 31 December 2009.

[61] VLM also imposes administrative fines in the framework of official reports drawn up by the police forces. VLM did not include the data on these fines in the information provided to the VHRM.



Graph 54) Number of administrative fines imposed by the Flemish Land Agency

As already explained in Chapter 3.5, VLM reports 1,076 official reports for the given period. In fact, these are not 1,076 official reports as referred to in the Environmental Enforcement Decree, but 1,076 'negative' identifications. Based on these negative identifications, 101 official reports were drawn up, which were submitted to the public prosecutor, and 975 inspection reports, based on which, under the Decree on Manure, VLM can impose an administrative fine. The Exhortations issued by VLM – see Chapter 3.3 – also followed these negative identifications.

For 117 field identifications of those 975 inspection reports with a negative identification an administrative fine was imposed. However, it is possible for various fines to be imposed as a result of a single inspection report.

Based on these figures, it can therefore be concluded that only 12% of the negative identifications reflected in an inspection report resulted in the imposition of an administrative fine by VLM. However, a note must be made about these figures.

Although usually no administrative fines are imposed for these infringements, the negative identifications referring to inspections of derogations and management agreements, for which 128 and 60 inspection reports were drawn up, respectively, were also reflected in an inspection report. Alternative sanctions in cases where no administrative fine is imposed consist in the (partial) loss of the derogation or, in the case of management agreements, a reduction or cancellation of the compensation the farmer receives in exchange for entering into the management agreement in question. In the case of, for instance, overfertilisation at plot level, for which 21 negative identifications were made during derogation inspections in the 2009 study period, VLM does impose fines.

Fines for imbalance at company level were not counted by VLM either in the number of fines imposed. The reason for this lies in the fact that these fines are not imposed following a field inspection, but purely

on the basis of calculations using database figures. However, during the 2009 study period 584 fines and 56 warnings were sent following an imbalance identified for the year 2007. All these fines and warnings, though, were included in a negative identification reflected in an inspection report, so that they form part of the 975 inspection reports. If these inspection reports are left out of consideration, there are only 334 inspection reports based on field identifications. This raises the share of fines imposed to 35%, namely 117 administrative fines imposed in the framework of 334 identifications.

A final remark about the number of inspection reports mentioned refers to some 30 inspection reports that were drawn up following a judicial order or an EFA form (on police request). These identifications do not automatically lead to an administrative fine either. For instance, in 2009 6 administrative fines were imposed following such a judicial order or EFA form.

4.3 CONCLUSION

Besides the criminal sanctions imposed by public prosecutors and criminal courts, the Environmental Enforcement Decree allows for administrative sanctions to be applied by the new Environmental Enforcement, Environmental Damage and Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy. These administrative sanctions are based on the distinction made in the Environmental Enforcement Decree between alternative administrative fines for environmental offences and exclusive administrative fines for environmental infringements. Appeals may be lodged with the newly created Environmental Enforcement Court against AMMC decisions to impose fines.

In addition, the Flemish Land Agency (VLM) could and can still impose its own administrative fines for infringements of Article 63 of the Decree on Manure.

With respect to the enforcement policy of the public prosecutors in the Flemish Region it was found that in 2009 public prosecutors received 6,162 cases relating to the environment, 67.04% of which came from the general police (local and federal police), 26.89% from the inspection services (supervisors), 1.09% were complaints and civil proceedings and 4.98% 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 2009 it concerned 1,202 cases, 48.75% of which came from ANB, 38.77% from AMI, 10.15% from VLM, 1.16% from OVAM and 1.16% from other environment services.[62] 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 next reports could be for the different environment administrations 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 codes for charges for the study period. In total, 3,023 cases were recorded by the public prosecutors in the Flemish Region in the study period with these charge codes, 43% of which referred to waste, 2.84% to manure, 12.87% to licences, 853 to emissions and 13.07% to nature protection. More specifically, 29.34% referred to illegal dumping. Hence, nearly 1 in 3 breaches for which an official report was drawn up during the study period relate to illegal dumping.

[62] 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.

On 10 January 2010[63] nearly 37% of cases were still in the preliminary investigation stage, while 10.42% were in the state of progress of 'amicable settlement'. Among the latter as well, the majority referred to waste. Only 2.91% was in the 'writ of summons' stage on 10 January 2010.

However, the fact that 41.35% of all Environmental Enforcement cases recorded by the public prosecutors in the Flemish Region, during the study period and as at 10 January, 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 the principle of opportunity where it could be demonstrated that the situation had been regularised' were also included in the state of progress 'no further action'.

In the context of the state of progress of Environmental Enforcement cases certain trends can be described – with due caution. For the largest share of cases – concretely 41.35% – it was decided that no further action would be taken during the study period. 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 code 'waste', was also the one with the highest dismissals ratio. The question arises whether further study may be required into possible alternative ways of processing these cases, such as the imposition of an administrative fine.

The dismissals in the framework of 'other reasons - administrative fine' are especially interesting in the context of this environmental enforcement report. Obviously, it is important in the framework of the new Environmental Enforcement Decree to study whether there is already an impact of the possibility given to public prosecutors in the decree to refer cases relating to environmental offences to AMMC with a view to the imposition of an administrative fine. The figures presented in this chapter indicate that it may be possible to already describe a trend. Before the coming into force of the Environmental Enforcement Decree 5.97% of Environmental Enforcement cases were dismissed with a view to the imposition of an administrative fine. After 1 May 2009 this percentage rose to 23.92%.[64] In total, this means that on 10 January 2010 nearly 10% of all Environmental Enforcement cases recorded by the public prosecutors in the Flemish Region after 1 May 2009 were dismissed in order to impose an administrative fine. Before the coming into force of the Environmental Enforcement Decree this was only 2.96%. Despite the fact that the decree was only in force for seven months during the study period, this increase can already be considered remarkable. It could also be concluded that the shares, in terms of percentage, of cases in which no further action was taken for reasons related to opportunity and for technical reasons dropped in the period after the coming into force of the Environmental Enforcement Decree, in favour of dismissals with a view to the imposition of an administrative fine. From this, we might deduce that public prosecutors choose to dismiss cases with a view to the imposition of an administrative fine rather than opt for a dismissal based on the principle of opportunity (or a technical dismissal).[65] This shows that the Environmental Enforcement Decree has had a positive start.

[63] Given that the reference date for these data is 10 January 2010, 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 2010, and are not the definitive status of a case.

[64] If, over time, a lot of the cases recorded by public prosecutors after the coming into force of the Environmental Enforcement Decree are dismissed, the percentage of the administrative fine will be lower than the current 23.92%. Conversely, it is also possible that the percentage of administrative fines will still increase. As the data for this report were collected on 10 January 2010, these figures should be interpreted with caution.

[65] When comparing the percentages above it must be taken into account that some cases referring to environmental infringements which have, in the meantime, been decriminalised previously did reach the public prosecutors and were recorded by them, whereas afterwards this was no longer the case. Therefore, some caution is required when comparing actions taken in cases received after 1 May 2010 or 25 June 2010 and cases received before those dates.

However, it must be pointed out that it is still too early to draw conclusions based on the data collected on 10 January 2010 about the extent to which cases are processed differently before and after the coming into force of the Environmental Enforcement Decree . We can only try to describe some trends.

Where the topics were concerned – based on the codes for charges – of the cases that were dismissed with a view to the imposition of an administrative fine, it was found that the cases for which this number increased most after the coming into force of the Environmental Enforcement Decree were those falling under 'waste', 'licences' and 'nature protection'. Only for cases falling under 'emissions' no relevant increase could be observed. This may suggest that public prosecutors opt for subjecting these cases to criminal proceedings themselves.

In order to maximise the impact of the Environmental Enforcement Decree – and administrative sanctions in particular – it is important to further study how as many dismissed cases as possible can be referred to AMMC by public prosecutors. In particular, this concerns environmental offences that are dismissed by public prosecutors for reasons relating to the principle of opportunity. Optimal attunement between public prosecutors and AMMC can further strengthen environmental enforcement.

It can also be seen from the figures supplied that there are regional differences between the different public prosecutors when it comes to the way in which environmental offences are processed, and the way in which they are submitted to 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 show that nearly 10% of all Environmental Enforcement cases recorded by the public prosecutors in the Flemish Region after 1 May 2009 were dismissed with a view to the imposition of an administrative fine. Many of these cases were submitted to AMMC; the remaining cases were submitted to other administrations, such as VLM. In total, AMMC received 304 official reports with a view to the imposition of an administrative fine. From the figures on the submitted cases per public prosecutor the regional differences that could also be observed from the figures of the public prosecutors became clear as well. Nevertheless, it can be said that all public prosecutors in the Flemish Region have already made use of the possibilities offered by the Environmental Enforcement Decree (to refer cases to AMMC with a view to the imposition of an administrative fine).

In the autumn of 2009 AMMC started studying the environmental offences it had received. Offenders were informed of the start of their procedure for an administrative fine, case files were requested from the bodies that had drawn up the official reports, and the first hearings were held and defences analysed. In 5 cases it was found that the official reports did not fall under the scope of Title XVI of DABM (events dating from before 1 May 2009). At the same time, AMMC started drawing up a framework of criteria, per type of offence, to determine the amount of the fine. The fact that AMMC did not yet impose any alternative administrative fines – and hence deprivations of benefits – in the study period has to do with the periods public prosecutors have to refer these cases to AMMC (180 days + possible extension of 180 days) and AMMC's own (indicative) decision periods (180 days from the notification of the start of the procedure). Finally, it can be pointed out that, in this initial period, this new division still had to give shape to all these new processes, design procedures and set up the internal organisation.

AMMC is not only competent to impose alternative administrative fines, but also to impose exclusive administrative fines in relation to environmental infringements. Environmental infringements are reflected in identification reports by supervisors, after which, given their decriminalisation, these reports are submitted directly to AMMC. During the study period AMMC received 18 identification reports, 16 of which referred to waste prevention and management, 1 to soil protection and remediation, and 1 to the maintenance and inspection of burners. The majority of these reports were drawn up by police district supervisors.

The identification report as an enforcement instrument has not yet been completely integrated into supervisors' activities. This is probably due, in part, to the fact that it is a new instrument, or that some legislation – such as nature protection law – hardly comprises any environmental infringements. Another explanation could be that supervisors did draw up identification reports, but that these were not submitted to AMMC. This could explain why in Chapter 3 supervisors reported having drawn up 383

identification reports, whereas AMMC only received 18. The procedures of the Environmental Enforcement Decree may not be completely known yet by all supervisors, or maybe the questioned supervisors are still insufficiently familiar with the term 'identification report' as used in the Environmental Enforcement Decree. The fact that supervisors draw up only a limited number of identification reports can also be explained by the fact that they have a discretionary power in this respect. When identifying an environmental infringement supervisors are not obliged to draw up an identification report. This clearly deserves further study.

During the study period AMMC took a decision in four of these 18 cases. In three cases an exclusive administrative fine was imposed, and in one case it was decided not to impose a fine. Here as well, the decision periods for the remaining environmental infringements only expired in early 2010, so that these could not yet be reported on.

(Non-suspensive) appeals may be lodged with the Environmental Enforcement Court against AMMC decisions to impose fines. During the study period this Environmental Enforcement Court did not receive any appeals yet. However, this can be explained by the fact that during this period AMMC imposed only 3 exclusive administrative fines. Given that most decision periods for environment-related cases dating from after 1 May 2009 only expired in 2010, more data will be provided on this in the Environmental Enforcement Report 2010.

Since the coming into force of the Decree on manure, VLM has competence to impose administrative fines for certain breaches of the Decree on manure. The Flemish Land Agency was therefore not only asked about the number of environmental enforcement inspections carried out between 1 May 2009 and 31 December 2009 and the actions taken following these inspections, but also about the number of administrative fines imposed by 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 VLM imposed 117 administrative fines following field identifications. The majority of these fines were imposed in the framework of breaches related to overfertilisation of plots, shipments without a correct and complete manure sales document; notification and cancellation of a manure sales document and failure to use or incorrect use of AGR-GPS.

Besides the instruments contained in the Environmental Enforcement Decree 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 law, which is quite an important sanctioning instrument in the framework of local environmental enforcement and, in particular, the combating of small-scale public nuisance.

When drawing up this Environmental Enforcement Report 2009 it was decided to report only on the activities of the public prosecutors, AMMC, the Environmental Enforcement Court and VLM.

5 CONCLUSION

5.1 SUMMARY CONCLUSIONS

At different points throughout the text of this environmental enforcement report tentative conclusions have been drawn, and recommendations following from thereof conclusions have been formulated. Before summarising these, it is important to point out, once again, the limited framework within which these conclusions and recommendations must be situated. The Environmental Enforcement Decree only came into force on 1 May 2009, and this report therefore only refers to the period from 1 May 2009 to 31 December 2009. Moreover, it must be emphasised again that the Environmental Enforcement Report 2009 is not a comprehensive report. For instance, it does not study the enforceability of the regulations, the effectiveness of enforcement activities, the burden of enforcement on the inspected bodies, the benefits for the environment, further explanations for the discrepancy between the number of official reports drawn up by the supervisors and that recorded by the public prosecutors, the effectiveness of the current instruments and the participation of third parties in environmental enforcement. These elements may deserve further analysis in future environmental enforcement reports. Not only the data are limited; the response from the actors involved in enforcement was also far from complete. Nevertheless, a relatively clear picture, of the enforcement activities of the different supervisors and the public prosecutors in 2009, can be obtained.

The main conclusions/findings can be summarised as follows:

1. A first conclusion results from a simple comparison of the number of actors involved in enforcement (according to the Environmental Enforcement Decree), 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 may be fair explanation for this disproportionality (such as the fact that supervisory competences were assigned but no monitoring activities were performed), but it is still important to look into this.
2. A second conclusion refers to the (mostly new) enforcement activities of local supervisors. A remarkable finding was that a large number (68%) of the responding municipalities stated to have no insight into the number of unlicensed plants on their territory. This can hinder effective enforcement. Hence, it seems important to give priority to the inspection of unlicensed plants.
3. A large majority of the responding municipalities have appointed a municipal supervisor. For the remaining municipalities it continues to be important to follow up this appointment, as well as the training of these local supervisors. In this context, it seems advisable to further explore the possibilities of appointing supervisors via intermunicipal associations. The first steps in this direction were taken in 2009. The use of these intermunicipal associations seems to be attractive especially for smaller municipalities.
4. An evaluation of the different enforcement instruments has made clear that most of them are used frequently by the different supervisors, with especially local police supervisors making frequent use of the instrument 'official report'. Remarkable are the responses of the local supervisors which show the drawing up of a high number of identification reports (in particular for environmental infringements), which are apparently, contrary to the rules laid down by the Environmental Enforcement Decree, not systematically submitted to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy. In fact, this body reported having received only one identification report from local supervisors with a view to the imposition of an exclusive administrative fine in the 2009 study period. Possibly this is due to terminological confusion, leading some municipalities to report on their 'internal' identification reports rather than on identification reports in the sense of the Environmental Enforcement Decree (in particular, for

environmental infringements, for which administrative fines are imposed by AMMC). In any case, there is a need for further investigation of what happens to these reports, and of whether they are submitted correctly when so required.

5. Both public prosecutor and AMMC data show that several public prosecutors have already found their way to administrative processing (via alternative administrative fines) as provided for in the Environmental Enforcement Decree. The data seem to indicate (although some caution is required given the short reference period) that certain cases which were probably dismissed by public prosecutors in the past are now referred to AMMC with a view to the imposition of an administrative fine. This would mean that one of the objectives of the Environmental Enforcement Decree has been realised. Even so, improvement is without a doubt possible here as well, taking into account that the number of official reports submitted to AMMC by public prosecutors amounts to a mere 10%[66]. However, this share may increase in the future. Another remarkable finding is that significant differences exist between public prosecutors. The number of official reports submitted in Kortrijk, for instance, was nearly 18%, while in Brussels this was no more than 1%. Hence, there certainly seems to be room for improvement when it comes to attunement and harmonisation between the different public prosecutors.
6. In conclusion, although the data presented in this report can indeed give some indication of trends in environmental enforcement in the Flemish Region since the coming into force of the Environmental Enforcement Decree, it must be unfortunately emphasised too few data are currently available to judge the overall effectiveness of environmental enforcement in the Flemish Region. For instance, the data presented here do not allow us to know how many infringements of environmental law are actually identified via enforcement. As a result, little is known about the so-called 'dark number' or blind spots. What could be indicated was the number of inspections carried out, and in how many cases an inspection led to the identification of a breach, but this does not provide any insight into the number of cases in which the breach could not be identified. In this first report no data could be provided either on actually imposed sanctions. On the imposition of sanctions within administrative processing (via AMMC and the Environmental Enforcement Court) no data were yet available in 2009. The public prosecutors could provide data on the number of cases in which prosecution, an amicable settlement or other ways of processing were opted for, but not on the sanctions that were finally imposed in the cases recorded by them after the coming into force of the Environmental Enforcement Decree[67] (for instance on the amounts of the amicable settlements or on the sanctions imposed by the judge in criminal cases). Recent scientific literature does provide insight into the average amounts of amicable settlements and fines imposed by the criminal courts and in the framework of appeal proceedings.[68] The VHRM hopes that these data will be available for the next reports, as they are obviously essential in order to be able to assess the effectiveness of environmental enforcement. Moreover, there are other instruments contributing to environmental enforcement besides those

[66] Here as well, it should be borne in mind that the reference date for these data is 10 January 2010. As a result, the percentage can still increase. Public prosecutors have 180 days, with a possible extension of another 180 days, to submit the case to AMMC. It is therefore very possible that this took place after 10 January 2010. In future, taking into account the further effect of the Environmental Enforcement Decree, a positive evolution of this figure is certainly expected.

[67] These were only provided for a period of 10 years (2000-2009), not for the study period.

[68] See, for instance, Billiet, C. and Rousseau, S., 'De hoogte van de strafrechtelijke boetes. Een rechtseconomische analyse van milieurechtspraak (1990-2000) van het Hof van Beroep te Gent', *Tijdschrift voor Milieurecht*, 2003, 131, Billiet, C.N., Rousseau, S., et.al., 'Milieucriminaliteit in handen van strafrechters en beboetingsambtenaren: feiten uit Vlaanderen en Brussel', *Milieu en Recht*, 2009, 347-348, Rousseau, S., 'Empirical analysis of sanctions for environmental offences', *International Review of Environmental and Resource Economics*, and Rousseau, S., 'The impact of sanctions and inspections on firms' environmental compliance decisions', working paper Centre for Economic Studies, Katholieke Universiteit Leuven, n° 2007-04, September 2007.

provided for by the Environmental Enforcement Decree. These include, for instance, sanctions involving a deprivation of rights, such as the suspension or withdrawal of authorisations (environmental licences, recognitions,...). In order to obtain a more complete picture, the use of these instruments could be studied as well.

5.2 RECOMMANDATIONS

Based on the above conclusions and the data presented in this report several recommendations can be formulated, both with respect to the data collection and with respect to the effectiveness of environmental enforcement (recommendations addressed to the Flemish Government), as well as issues deserving further attention from the VHRM itself, and which could be studied further with the help of external experts.

5.2.1 Recommendations for the Flemish Government

In accordance with Article 16.2.5 of the Environmental Enforcement Decree the VHRM will formulate 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 the enforcement of environmental law. Hence, the list below contains a number of recommendations addressed to the Flemish Government.

Generally, it can be said that all enforcement actors need to be supported in their enforcement activities within the assigned tasks when it comes to training, personnel and financial resources. More specifically, however, our recommendations with respect to the supervisors are the following:

- Especially for smaller municipalities it seems advisable to explore the possibility of appointing supervisors via intermunicipal associations. The Flemish Government could play a role in the promotion of intermunicipal associations, on the one hand, and the joining of these intermunicipal associations by smaller municipalities, on the other. However, intermunicipal cooperation is not a total solution suitable for all municipalities. For some municipalities other solutions must be thought of[69];
- It seems to be advisable for supervisors in general, and municipal supervisors in particular, to give priority to monitoring compliance of the licence/reporting obligation of establishments and activities present on their territory. This also implies a thorough verification of whether the real situation 'on the shop floor' corresponds to the one described in the available licence/report, or whether activities are carried out to which a general prohibition applies.

Besides the recommendations referring to the activities of the supervisors, a number of recommendations can be made to the Flemish Government with reference to the sanctions policy.

- Taking into account the significant regional differences, it seems advisable that all public prosecutors are (once more) made sufficiently aware of the possibilities of administrative sanctioning by AMMC provided for by the Environmental Enforcement Decree, with a view to a uniform processing of environmental infringements. The figures included in the Environmental Enforcement Report also suggest that some cases are still being dismissed by public prosecutors based on the principle of opportunity, while they could be referred to AMMC;
- It is recommended to update the 'prioriteitennota Vervolgingsbeleid milieurecht in het Vlaamse Gewest' (Priorities Document on the Prosecution Policy for Environmental law in the Flemish

[69] See current discussion 'Groenboek Interne Staatshervorming', Flemish Government, July 2010

Region) of 30 May 2000 taking into account the classification document[70] of 2010. In this context, it may be useful to carry out a hazard study in order to define clearly what is being/should be monitored, and why[71]. This could increase uniformity between cases processed by public prosecutors and cases processed by AMMC. The agreements resulting from these consultations should then be reflected in a protocol, as stipulated by the legislation.

- An investigation must be conducted regarding the relevance of the provisions defining environmental infringements included in the Appendices to the Environmental Enforcement Act. A review of the criteria based on which a breach is regarded as an environmental infringement could be considered, so that more breaches of environmental law with a limited environmental impact can be processed in an exclusively administrative way.

5.2.2 Points of attention

Besides the above recommendations addressed to the Flemish Government, this report has mentioned some points of attention to be dealt with by the VHRM itself in the plenary meetings, in the working groups or with the help of external expertise.

During the drawing up of this first Environmental Enforcement Report it already became clear how important the collection of uniform data was for a quality assessment. Indeed, in this report it was not possible to make all the necessary comparisons and analyses based on the data received, as we described in detail in Chapter 1. With a view to the future environmental enforcement reports, it is therefore essential to request and provide comparable and uniform data, to enable reporting in the light of other important criteria which could not be taken into account in this report, such as the enforceability of the environmental legislation, the burden of enforcement on the target groups, the environmental gain obtained by enforcement, the efficiency of enforcement efforts, etc. Moreover, during the drawing up of the report it became clear that certain data should definitely also be requested from enforcement actors in the future in order to better map the enforcement landscape. More specifically, the following points of attention can be mentioned in this context:

- It is recommended to achieve a uniform data collection, in which identical terms are used, for instance, to define the concept of 'monitoring';
- It is important to reach agreement between supervisors and public prosecutors on a uniform set of codes for the various breaches of environmental law in order to enhance the uniformity and comparability of the figures;
- With a view to the future, it would be useful to gain insight into the nature, topic, environmental impact and sanctioning of the breaches of environmental law in order to get an idea of the effectiveness of the environmental legislation, of its enforceability, and of its enforcement.

In the VHRM's activities, both via the plenary meeting and via the working groups, it already became clear that the enforcement actors have been faced with quite a few practical problems when it comes to the interpretation and implementation of the Environmental Enforcement Decree in the field. The conclusions in this report also indicate the need for operational frameworks, guidelines and data exchange in order to efficiently and effectively carry out the supervisory tasks assigned. Furthermore, it became clear in this report that the appointment of supervisors is interpreted differently by the different actors. Therefore, the VHRM – via the working groups or external experts – can focus on the following key issues in the coming years:

[70] Environmental Enforcement Programme 2010, Flemish High Council of Environmental Enforcement, January 2010, pp. 103-104

[71] Acts 2006-2007, document 1249 no. 2, Flemish Parliament, pp. 34-35

- The relation between supervisory competences, number of FTEs, inspections actually carried out, and other relevant indicators to measure the efficiency of enforcement instruments and efforts must be further investigated;
- It also needs to be verified whether persons who have formally been appointed supervisors are actually performing supervisory duties (full-time or part-time), and if not, for what reasons are;
- It can also be studied to which extent the duties of a supervisor can be combined with other duties, and, if they cannot, how such a situation can be resolved;
- The development of guidelines and criteria indicating what enforcement instrument can be used in which situation, as well as the optimal combination of available enforcement instruments and enforcement resources (such as risk analysis), could provide a useful reference for supervisors;
- It can be studied in which way regional and local supervisors could mutually support each other's activities.
- The (further) development of regional platforms to support environmental enforcement must be encouraged or initiated, as the case may be.
- Further research into the reasons for the large number of inspections in which no breaches are identified could shed light on the effectiveness of enforcement efforts;
- It is very important for supervisors – and all enforcement actors – to know the definitions and procedures as included in the Environmental Enforcement Act and the Environmental Enforcement Decree. The VHRM can be the forum where relevant information and experiences can be exchanged so that problems can be remedied and any necessary measures can be taken.

Where sanctioning is concerned, we can define the following key issues for the future implementation of the environmental enforcement policy:

- We recommend further investigation of whether all official reports relating to breaches of environmental legislation which public prosecutors decide not to prosecute (as provided for in the Environmental Enforcement Decree) are submitted to AMMC with a view to the imposition of an administrative fine. In cases where it is decided not to prosecute, the question arises whether the case is submitted to AMMC in due time, within the periods stipulated in the Environmental Enforcement Act and the Environmental Enforcement Decree. If it appears not the case, it might be advisable to develop legislative initiatives in this respect.
- Furthermore, it should be studied whether cases relating to forest law and river fishing regulations should cease to be processed by the police court, and be processed by the criminal courts, as is the case for other environmental offences.

GLOSSARY - ABBREVIATIONS

ENFORCEMENT ACTORS AND INSTITUTIONS

ALBON	Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy
AMMC	Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy
AMI	Environmental Inspectorate Division of the Department of Environment, Nature and Energy
AMV	Environmental Licences Division of the Department of Environment, Nature and Energy
ANB	Agency for Nature and Forests
AWV	Agency for Roads and Traffic
AZ&G	Flemish Care and Health Agency
OVAM	Public Waste Agency of Flanders
LNE Department	The Department of Environment, Nature and Energy
MHHC	Environmental Enforcement Court
SG of the LNE Department	Secretary General of the Department of Environment, Nature and Energy
VHRM	Flemish High Council of Environmental Enforcement
VLM	Flemish Land Agency
VMM	Flemish Environment Agency
VVP	Association of Flemish Provinces
VVSG	Association of Flemish Cities and Municipalities
W&Z	Waterwegen en Zeekanaal NV (Waterways and Sea Canal plc)

ENVIRONMENTAL ENFORCEMENT TERMINOLOGY

DABM	Decree of 5 April 1995 containing general provisions on environmental policy
GAS	Municipal Administrative Sanction
MHR	Environmental Enforcement Report
PV	Official report

OTHER TERMS

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. 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.
BOJ	Belgian Official Journal
ECO form	Document which is completed by the police during waste shipment inspections and then sent to the central Environment Service in the framework of centralised data collection. Besides the purpose of control of individual shipments, the data are used to perform operational and strategic analyses.
EFA form	ECO form for waste
IV	Inspection report drawn up by the Flemish Land Agency during inspections in the framework of the Decree on Manure and on the basis of which VLM can impose an administrative fine
MAD	Manure Sales Documents
N	nitrogen
unk.	unknown
P_2O_5	phosphate
REA/TPI	national IT programme for courts of first instance with applications for criminal prosecutors and registries, youth court prosecutors and registries, civil registries
FTE	Full-Time Equivalent

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Aalst
Aarschot
Aartselaar
Alken
Anzegem
Ardooie
Arendonk
As
Asse
Assenede
Avelgem
Balen
Beernem
Beerse
Bekkevoort
Berlaar
Bilzen
Blankenberge
Boechout
Bonheiden
Boom
Boortmeerbeek
Borgloon
Bornem
Boutersem
Herselt
Heuvelland
Holsbeek
Hooglede
Hoogstraten
Houthulst
Hove
Huldenberg
Ingelmunster
Izegem
Jabbeke
Kapellen
Kapelle-op-den-Bos
Kaprijke
Kasterlee
Knokke-Heist
Koekelare
Koksijde
Kontich
Kortemark
Kortenaken
Kortenberg
Kortessem
Kruishoutem
Lanaken
Pittem
Poperinge
Putte
Puurs
Ravels
Retie
Riemst
Roeselare
Ronse
Roosdaal
Ruiselede
Rumst
Schelle
Scherpenheuvel-Zichem
Schilde
Schoten
Sint-Amands
Sint-Genesius-Rode
Sint-Katelijne-Waver
Sint-Laureins
Sint-Lievens-Houtem
Sint-Martens-Latem
Sint-Niklaas
Sint-Pieters-Leeuw
Sint-Truiden

Brasschaat
Brecht
Bredene
Bruges
Buggenhout
Damme
De Panne
De Pinte
Deerlijk
Deinze
Denderleeuw
Destelbergen
Diest
Dilbeek
Dilsen-Stokkem
Drogenbos
Duffel
Eeklo
Erpe-Mere
Essen
Evergem
Gavere
Geel
Geetbets
Genk
Ghent
Gooik
Grimbergen
Lebbeke
Ledegem
Lendelede
Leopoldsburg
Leuven
Lichtervelde
Lier
Lint
Lochristi
Lokeren
Londerzeel
Lovendegem
Lummen
Maarkedal
Maldegem
Malle
Mechelen
Meise
Melle
Menen
Merksplas
Mesen
Middelkerke
Mol
Moorslede
Mortsel
Neerpelt
Nevele
Spiere-Helkijn
Staden
Temse
Ternat
Tervuren
Tielt
Tielt-Winge
Tienen
Tongeren
Torhout
Veurne
Vilvoorde
Voeren
Vorselaar
Vosselaar
Waarschoot
Wachtebeke
Waregem
Wemmel
Wervik
Wichelen
Wielsbeke
Wijnegem
Willebroek
Wingene
Wortegem-Petegem
Zandhoven
Zedelgem

Grobbendonk	Niel	Zele
Haacht	Nieuwpoort	Zelzate
Halle	Nijlen	Zemst
Hamme	Oosterzele	Zingem
Hamont-Achel	Oostkamp	Zomergem
Harelbeke	Oostrozebeke	Zonhoven
Hasselt	Opglabbeek	Zottegem
Hechtel-Eksel	Oud-Heverlee	Zulte
Heist-op-den-Berg	Oud-Turnhout	Zutendaal
Hemiksem	Overijse	Zwalm
Herenthout	Peer	Zwevegem
Herne		

Appendix 2: Responding police districts

Aalst

Aalter/Knesselare

Aarschot

AMOW

Assenede/Evergem

Balen/Dessel/Mol

Beersel

Beringen/Ham/Tessenderlo

Berlare/Zele

Beveren

Bierbeek/Boutersem/Holsbeek/Lubbeek

Bilzen/Hoeselt/Riemst

Blankenberge/Zuienkerke

Brakel

Bredene/De Haan

BRT

Brugge

Deinze/Zulte

Demerdal - DSZ

Denderleeuw/Haaltert

Dijleland

Dilbeek

Druivenstreek

Erpe-Mere/Lede

Gaoz

Gavers

Gent

Geraardsbergen/Lierde

Kempen N-O

Kempenland

Klein Brabant

K-L-M

Kruibeke/Temse

Leuven

Lier

Lokeren

Lommel

LOWAZONE

Maasland

Maasmechelen

Maldegem

Mechelen

Meetjesland-Centrum

Middelkerke

MIDOW

MINOS

MIRA

Neteland

Noord

Noorderkempen

Noordoost-Limburg

Oostende

Pajottenland

Polder

Puyenbroeck

Regio Turnhout

Gingelom/Nieuwerkerken/Sint-Truiden

Grens

Grensleie

Haacht

Hageland

Hamme/Waasmunster

Hamont-Achel/Neerpelt/Overpelt

Hazodi

Heist

Hekla

HERKO

Herzele/Sint-Lievens-Houtem/Zottegem

Het Houtsche

Heusden-Zolder

Houthalen-Helchteren

Ieper

Kanton Borgloon

KASTZE

RIHO

RODE

Ronse

Schelde-Leie

Sint-Gillis-Waas/Stekene

Sint-Niklaas

Sint-Pieters-Leeuw

Spoorkin

TARL

Tongeren/Herstappe

Vlaamse Ardennen

Voeren

Voorkempen

Westkust

West-Limburg

Zuiderkempen

Zwijndrecht

COLOPHON

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