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State of  
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# Environmental Enforcement Report 2014

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## PREFACE

For the Flemish High Council of Environmental Enforcement (VHRM), the year 2014 was one of many changes. Not only was this the fifth anniversary of the VHRM which implied a new composition, it was also allocated, in addition to the environment, a completely new area of authority, namely spatial planning. This means that in 2014 the Flemish High Council of Environmental Enforcement became the Flemish High Enforcement Council for Spatial Planning and Environment (also VHRM in short) and underwent an expansion of both members and its set of tasks. The VHRM is now not only responsible for drawing up an environmental enforcement report, but shall, in the future, also draw up an enforcement report dealing with spatial planning.

This Environmental Enforcement Report 2014 is the sixth of his kind. In contrast to the report of 2013, which contains an evaluation of the five previous years, the report for 2014 only looks back over the past calendar year, that of 2014. The period of five years in the previous report was chosen because the new Environment Enforcement Act had come into operation five years earlier.

Since its entry into office the VHRM has aimed to provide added value to the enforcement actors in the Flemish Region; the VHRM is now engaged for advice in drawing up various policy documents. The VHRM supports the Government of Flanders and the Flemish Parliament when they make decisions for the environmental enforcement policy. Apart from a policy-related contribution, the Flemish High Enforcement Council for Spatial Planning and Environment also aims to make a highly practical contribution by organising congresses and workshops on topical subjects, such as targeted supervision and enforceability of regulations, by providing models and templates to facilitate enforcement practice, by setting up a digital exchange forum, and, especially, by organising consultation between all the enforcement actors. Through these and other initiatives the VHRM aims to establish a framework for cooperation and open dialogue between the different enforcement actors.

Specifically by means of the Environmental Enforcement Report the VHRM also intends to offer special added value. Not just for policymakers, but also for the enforcement actors in the field. This is precisely why it is of vital importance for these enforcement actors to supply data and to make proposals with a view to meeting the content requirements of the report that are laid down by Flemish Parliament Act, but also with an eye to improving enforcement practice. Therefore, I wish to extend my gratitude to all the enforcement actors who contributed to the present Environmental Enforcement Report and I hope that together we can optimise the environmental enforcement landscape.

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

Chairman of the Flemish High Enforcement Council for Spatial Planning and Environment



# 1 INTRODUCTION

## 1.1 FLEMISH PARLIAMENT ACT OF 5 APRIL 1995 CONTAINING GENERAL PROVISIONS ON ENVIRONMENTAL POLICY

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

The VHRM was created to support the Flemish Parliament and the Government of Flanders in the coordination of environmental enforcement policy and the interpretation of its content. In view of an efficient enforcement of environmental law, the VHRM sets up systematic consultations with the environmental enforcement actors. These consultations can result in agreements between the different actors. Such agreements are called protocols. The VHRM will set the pace, both in organising consultations with the environmental enforcement actors and in preparing and finalising the protocols. Within this framework, reference can be made to the first environmental enforcement protocol that was signed on 18 March 2013 by Minister Schauvliege and Minister Turtelboom, namely the 'Prioriteitennota vervolgingsbeleid milieurecht in het Vlaamse Gewest 2013' (Priorities Document on the Prosecution Policy for Environmental Law in the Flemish Region)<sup>2</sup>.

When (certain articles of) the decree of 25 April 2014 concerning the enforcement of the integrated environmental permit came into force on 6 September 2014, the Flemish High Council of Environmental Enforcement was transformed into the Flemish High Enforcement Council for Spatial Planning and Environment, VHRM for short. The transition from Flemish High Council of Environmental Enforcement to Flemish High Enforcement Council for Spatial Planning and Environment included an expansion of members,

representatives and deputies of the VHRM, including a vice-chair expert in the area of enforcement of the Flemish Code on Spatial Planning and members and deputies proposed by the advisory council of the policy area of Spatial Planning, Housing Policy and Immovable Heritage Policy Area and the Strategic Advisory Council for Spatial Planning and Immovable Heritage.

The composition of the plenary meeting of the Flemish High Enforcement Council for Spatial Planning and Environment was laid down in the Flemish Government Decree of 17 October 2014 on the appointment of the members of the Flemish High Enforcement Council for Spatial Planning and Environment. Moreover, the VHRM works together with a number of working groups to study specific issues. The complete composition of the plenary meeting can be found on the VHRM website. In addition to the plenary meeting<sup>3</sup>. The VHRM also works with a number of working groups in order to research special issues.

Each year, the VHRM has to draw up an environmental enforcement report and every five years an environmental enforcement programme.

- ▶ The environmental enforcement programme, which was given a time frame of five years for the first time this year, contains recommendations for environmental enforcement based on the analysis of the individual programmes of all the actors subject to the Environment Enforcement Act<sup>4</sup>. The environmental enforcement reports from 2010 and 2011 are available on the VHRM website.
- ▶ The environmental enforcement report contains 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

<sup>1</sup> Publication in the Belgian Official Journal, 29 February 2009.

<sup>2</sup> <http://www.vhrm.be/protocollen-0/prioriteitennota>

<sup>3</sup> <http://www.vhrm.be/leden>

<sup>4</sup> <http://www.vhrm.be/milieuhandhavingsprogramma>

overview of cases in which no sentence was passed within the set term with respect to the appeals against decisions to impose administrative measures; an evaluation of the decision-making practice of public prosecutor's offices when it comes to whether or not to prosecute an identified environmental offence; an overview and comparison of the environmental enforcement policy conducted by municipalities and provinces; an inventory of the insights obtained during enforcement activity which can be used to improve environmental law, policy visions and policy implementation; and recommendations for the further development of environmental enforcement policy. This report should include any relevant figures on the environmental enforcement policy conducted over the past calendar year. The environmental enforcement report is regarded as a crucial instrument in the support, and possible adjustment, of the environmental enforcement policy to be pursued.<sup>5</sup> These environmental enforcement reports from 2009 through 2013 are available on the VHRM website.

In addition, the VHRM is responsible for the coordination of the consultancy process in the context of drawing up a draft enforcement programme for Spatial planning. In the future, the VHRM will also draw up an Enforcement Programme for Spatial Planning.

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<sup>5</sup> <http://www.vhrm.be/milieuhandhavingsrapport>



## 1.2 METHODOLOGY AND RELEVANCE OF THE ENVIRONMENTAL ENFORCEMENT REPORT 2014

### 1.2.1 Methodology

The aim of the Environmental Enforcement Report is to provide a concrete picture, based on relevant, reliable figures and qualitative data, of the environmental enforcement policy that was pursued in the Flemish Region from 1 January 2014 through 31 December 2014.

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

The following actors were asked about their activities in the area of environmental law enforcement between 1 January 2014 and 31 December 2014:

- ▶ the Environmental Inspectorate Division of the Department of Environment, Nature and Energy (AMI);
- ▶ the Environmental Licences Division of the Department of Environment, Nature and Energy (AMV);
- ▶ the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy (AMMC);
- ▶ the Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy (ALBON);
- ▶ the Secretary-General of the Department of Environment, Nature and Energy;
- ▶ the Public Waste Agency of Flanders (OVAM);
- ▶ the Flemish Land Agency (VLM);
- ▶ the Flemish Environment Agency (VMM);
- ▶ the Agency for Nature and Forests (ANB);

- ▶ Waterwegen en Zeekanaal nv (Waterways and Sea Canal Agency) (AWZ);
- ▶ the Flemish Agency for Care and Health (VAZG);
- ▶ the Agency for Roads and Traffic (AWV);
- ▶ NV De Scheepvaart (Shipping Agency);
- ▶ the Department of Mobility and Public Works (MOW);
- ▶ the Flemish mayors;
- ▶ the Flemish municipalities;
- ▶ the intermunicipal associations;
- ▶ the Flemish police districts;
- ▶ the federal police;
- ▶ the Flemish provincial governors;
- ▶ the Flemish provincial supervisors;
- ▶ the Environmental Enforcement Court;
- ▶ the public prosecutor's offices.

As indicated in the list above, the intermunicipal associations, active in the area of enforcing environmental law, are also asked. Indeed, the Environmental Enforcement Act stipulates that municipalities may opt to call on the services of a supervisor via an intermunicipal association or through intermunicipal cooperation.

A standard questionnaire was used again in order to obtain comparable data. Among other things, questions were asked about the number of supervisors within the organisation, the number of full-time equivalents (FTE) dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-

supervisors, the number of inspections carried out between 1 January 2014 and 31 December 2014, the number of initial official reports and identification reports drawn up, and the number of imposed administrative measures and safety measures. The bodies imposing the sanctions were also asked about their activities between 1 January 2014 and 31 December 2014.

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

Since this is already the sixth Environmental Enforcement Report, a comparison will be made with the data from previous environmental enforcement reports, wherever relevant and interesting. This allows us to give a picture of the impact and implementation of the Environmental Enforcement Act.

### 1.2.2 Structure

It was clearly laid down by Flemish Parliament Act which matters are to be reported on as a minimum. Therefore, the VHRM has aligned the questionnaire with these requirements, although it has opted to use a different order than in the Environmental Enforcement Act.

The focus in this second chapter is therefore mainly on the efforts made by the supervisory actors. First, an evaluation is made of the environmental enforcement policy pursued in the past calendar year by the regional supervisors, and the federal and local police, as well as of the enforcement activities performed at the local level by provincial governors, provincial supervisors, municipal supervisors and supervisors of intermunicipal associations. Figures will be provided of the number of supervisors per organisation, the number of FTEs dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act, the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors, and the number of inspections carried out by these supervisors in 2014. This will also allow us to get an idea of the number of inspections that were carried out per supervisor. With regard to the federal

and local police, the types of official reports are discussed that were drawn up by the police forces in the context of environment in 2014.

In addition, specific attention is devoted to the proactive inspections carried out by the federal police within the framework of waste shipments, and to the activities of local police supervisors. After that, the pursued local environmental enforcement policy is evaluated. When local environmental enforcement policy is discussed, attention is also drawn to the number of Category 1, Category 2 and Category 3 plants on the territory. Subsequently, the supervisory duties carried out by the Flemish cities and municipalities are studied. Where relevant, a comparison will be made with the data from the reports of previous years.

In Chapter 3 the emphasis is on the use of the individual environmental enforcement instruments, the administrative measures and the safety measures by the different environmental enforcement actors. In order to clearly define the term 'environmental enforcement instrument', a list was made of these instruments on the basis of the parliamentary preparations for the Environmental Enforcement Act. This list was used to draw up the standardised questionnaire. It concerns the following instruments: recommendations, exhortations, administrative measures (regularisation order, prohibition order, administrative coercion, or a combination thereof), safety measures, administrative fines (and deprivation of benefits) and criminal penalties. Administrative fines, administrative transactions and criminal penalties will be discussed in a separate chapter, namely Chapter 4 'Evaluation of the sanctions policy pursued in the past calendar year'. Just like in the previous Environmental Enforcement Reports, the enforcement instruments will be compared to the number of inspections during which a breach was identified and not to the total number of inspections that were carried out.

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

Next, Chapter 4 'Evaluation of the sanctions policy pursued over the past calendar year' provides an overview of the administrative and criminal sanctions imposed by the Flemish Land Agency (VLM), the Environmental Enforcement, Environmental Damage and

Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy, the public prosecutor's offices and the Environmental Enforcement Court (MHHC).

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

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

### 1.2.3 Notes

The Environmental Enforcement Act stipulates that the environmental enforcement report will contain, among other things, an evaluation of the regional environmental enforcement policy pursued over the past calendar year, a specific evaluation of the use of the individual enforcement instruments and an evaluation of the decision-making practice of the public prosecutor's offices when it comes to whether or not to prosecute an identified offence. These cannot be evaluations in the strict sense, however. In order to actually determine how effective the environmental enforcement policy is, a number of evaluation criteria should be defined beforehand. Since this is the sixth environmental enforcement report of the VHRM it is possible, however, to make an evaluation of the further implementation of the Environmental Enforcement Act and to offer an initial insight into how enforcement actors use the instruments provided to them by the Environmental Enforcement Act.

Secondly, attention should be drawn to the fact that the response rate was still not 100% for this environmental enforcement report either. 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 are not entirely representative and the conclusions as well should be

interpreted in this light. The positive element is that the response rate has increased year by year.

As indicated earlier in the description of the structure, the activities of local police supervisors are discussed in a separate chapter, after the activities of the federal police. This has to do with the fact that local police forces have distinct duties with regard to environmental law enforcement. On the one hand, police officers have been appointed as supervisors within a police district in some cities and municipalities. On the other hand, local police forces are in charge of basic police services and more specifically carry out all duties of the administrative and judicial police on the territory of the police district. In this context they naturally also enforce environmental law, but not as supervisors under the Environmental Enforcement Act. For this Environmental Enforcement Report 2014 the superintendents of the Flemish police districts were asked to only report, when a supervisor or supervisors was/were appointed within the police district, about the activities of this supervisor or these supervisors. This section (2.2.3) should therefore be read together with the evaluation of the pursued local environmental enforcement policy (2.3.6).

In order not to increase the reporting burden unnecessarily, the questionnaire was not extended in contrast to the previous years. However, this means that the present report can only reflect what the environmental enforcement actors and supervisors did in terms of supervision and the imposition of sanctions in 2014, not how and why they did so. As the survey was about figures and no context information was asked for, this may leave room for interpretation. Still, the members, representatives and deputies of the VHRM were given the opportunity to comment further on the content of the data after they were processed and to subsequently place the results in a broader context.

Even this sixth environmental enforcement report has its limits, although it is a next step in the evaluation of the environmental enforcement policy in the Flemish Region and in the further implementation of the Environmental Enforcement Act in 2014. With the environmental enforcement report the Flemish High Enforcement Council for Spatial Planning and Environment not only tries to provide added value for policymakers, but also for the enforcement actors themselves.

## 1.3 ENVIRONMENTAL ENFORCEMENT POLICY

The Coalition Agreement of the Government of Flanders 2014-2019<sup>6</sup> contains the ambition for an increase in efficiency, and more collaboration and coordination between all agencies that have the task to enforce Flemish legislation and curb infringement. The aim is to achieve a streamlining of the procedures in the current Flemish enforcement regulations.

In the context of the modernisation of the instruments and the creation of an even more efficient government, the policy lines and priorities of the enforcement of the integrated environmental permit are developed in the enforcement programme and the instruments of administrative coercion are optimally deployed. In addition, the aim is for a solution-driven and customer-friendly environment administration, whereby the administrations offer and facilitate solutions to help a project move forward and act as a knowledge cell that cooperates in the formation of consensus, always with a view to the general interest. With regard to enforcement, good sense must prevail and a solution-driven and customer-friendly approach is paramount. The decree framework adopted must also support this solution-driven working method.

The VHRM has an important supporting role in this. Both the attunement of the environmental enforcement report with the Spatial planning enforcement report and the coordinating role of the council when drawing up the Spatial planning enforcement report are an implementation of the coalition agreement.

The Policy Memorandum environment 2009-2014 of the Flemish Minister Joke Schauvliege<sup>7</sup> confirms strategic and operational objectives concerning environmental enforcement which the VHRM can implement to an important degree.

Strategic objective 3 “Simple and effective instruments” as specified further in operational objective 14. “Further expansion of targeted enforcement policy” is of specific importance for enforcement.

In the policy memorandum of the Flemish Minister for General Government policy, Geert Bourgeois<sup>8</sup> links to enforcement can be found, more specifically in strategic

objective 1 “A smooth and reliable service for the Government of Flanders, an innovating process management for decision-making and implementation of the Flemish Justice Department”.

This strategic objective is further developed in six operational objectives, two of which are directly related to the enforcement policy.

On the one hand, this is elaborated in operational objective 1.4: Implementation of the cooperation partnership concerning the criminal policy and the safety policy for a more coherent prosecution of breaches:

“Flanders has many powers with criminal law aspects, such as living environment, urban development, employment, traffic safety, the arms trade, youth protection and compulsory education. I shall implement the cooperation partnership concerning the criminal law policy and the safety policy so that breaches relating to Flemish powers with criminal law aspects can be prosecuted in a more coherent manner. After the sixth state reform, Flanders has been given more instruments to enforce its own legislation and to develop its own prosecution policy. I shall begin the cooperation with the Board of Procurators General as quickly as possible. I shall actively attend the meetings of the Board of Procurators General and ensure that the policy priorities of the Government of Flanders are translated as quickly as possible into directives for the criminal law policy. I shall adopt as principle in this that criminal prosecution can best be requested only for the most culpable infringements (criminal law as ultimate remedy). To prepare the directives for the strategic policy, it is important to designate representatives in the various thematic expertise networks and in horizontal expertise networks, such as the criminal law policy and the criminal justice system. I shall strengthen the cooperation with the federal level in the context of the security policy and make an active contribution to the Framework policy document on integral security and the national security plan. All of this implemented in close consultation with my colleagues competent for the material in question. That is why I shall set up a coordination mechanism in the Government of

<sup>6</sup> <http://ebl.vlaanderen.be/publications/documents/60797>

<sup>7</sup> <http://ebl.vlaanderen.be/publications/documents/65581>

<sup>8</sup> <http://ebl.vlaanderen.be/publications/documents/65542>

Flanders. That agency has the assignment to support the criminal law policy and the security policy. Using the law on positive injunctions, Flanders can order the public prosecution service to prosecute, in individual cases, a criminal law file or to apply a remedy at law. I shall apply this law on positive injunctions in a responsible way and in close consultation with the competent ministers of the material concerned.”

On the other hand, clear links are contained in operation objective 1.5 Expansion of the Flemish inspection and enforcement policy by strengthening the efficiency of and coordinating between all inspection and enforcement agencies and the streamlining of processes and procedures:

“I shall lay the foundations for a Flemish inspection and enforcement policy, on the understanding that the individual inspection agencies shall continue to exist. For this, I shall implement the recommendations from the theme audit on enforcement by Audit Flanders. Within the administration, a process has been started to develop recommendations about the cross-policy areas of an inspection and enforcement policy. I am studying how the activities of that working group can be continued to develop specific proposals for increasing efficiency and increase collaboration and coordination between all inspection and enforcement agencies. The guiding principle in this is that inspection and enforcement agencies in Flanders must satisfy six principles of good supervision: selectivity, decisiveness, collaboration, transparency, professionalism and independent operation. I shall also set a specific project group to work tasked with studying how we can streamline the inspection processes and procedures in the current Flemish enforcement regulations. For the inspection processes I am thinking, for example, about the duration and frequency of inspections, joint inspections by various agencies and the limitation of the supervision burden. I shall also aim to draw up a decree for administrative coercion which will streamline the processes and procedures for imposing administrative fines and measures. I shall increase the customer-friendliness of inspections and reduce the supervision burden of those inspected. If irregularities are identified during an inspection, the inspection agencies shall give those inspected information on how they can comply with all obligations. Sanctions shall only be imposed if the breach continues. The possibility of immediate sanctions remains for serious infringements. I shall have an inventory drawn up of methods for increasing

spontaneous compliance based on literature and existing practices. The inspection and enforcement agencies shall be involved in a systematic and structural way in drawing up and amending relevant laws and legislation.”

The VHRM will, taking the context above into account, be able to make an important contribution to the implementation of both the policy memorandum of the Flemish Minister for Environment, Nature and Agriculture and the policy memorandum of the Flemish Minister for General Government Policy.



## 2 EVALUATION

The purpose of this chapter is to evaluate the Flemish environmental enforcement policy from 1 January 2014 through 31 December 2014. It reports on the enforcement and supervisory activities of the different actors who were active in the Flemish Region in 2014. Whenever possible and relevant, a comparison will also be made in terms of percentage with the data which the VHRM collected in the Environmental Enforcement Report 2013.

### 2.1 EVALUATION OF THE REGIONAL ENVIRONMENTAL ENFORCEMENT POLICY

#### 2.1.1 Regional supervisors

The Environmental Enforcement Act determines in Article 16.3.1 that the personnel of the department and the agencies coming under the policy areas of Environment, Nature and Energy; Welfare, Public Health and Family; and Mobility and Public Works can be appointed as supervisors by the Government of Flanders. It concerns the following enforcement actors: the Secretary General of the Department of Environment, Nature and Energy (LNE); the Environmental Inspectorate Division of the LNE Department; the Environmental Licences Division of the LNE Department; the Land, Soil Protection, Subsoil and Natural Resources Division of the LNE Department; the Flemish Land Agency; the Flemish Environment Agency; the Agency for Care and Health; the Agency for Nature and Forests; the Public Waste Agency of Flanders, and Waterwegen en

Zeekanaal nv. Since 2010, following the introduction of the amendment decree of the Government of Flanders of 19 November 2010, the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart (Shipping Agency) can appoint supervisors as well. Article 16.3.2 of the Environmental Enforcement Act also stipulates that only persons who have the necessary qualifications and characteristics to adequately perform the supervisory duties can be appointed supervisors.

In the questionnaire the regional supervisory bodies were therefore asked about the number of supervisors, appointed by the Government of Flanders, they had at their disposal in 2014. Table 1 shows the number of supervisors used by the regional enforcement actors in 2014. The data from the Environmental Enforcement

Report 2013 also made it possible to compare the total number of supervisors available to the supervisory body in 2013 and 2014.

## NUMBER OF SUPERVISORS

REGIONAL ENFORCEMENT ACTOR	2012	2013	2014
ALBON	15	15	15
AMI	96	101	114
AMV	70	80	84
ANB	176	166	162
AWZ	87	65	62
AWV	/	62	59
VAZG	20	20	/
Nv De Scheepvaart (Shipping Agency)	30	30	30
OVAM	106	112	112
VLM	42	45	42
VMM – Division Operational Water Management	/	/	8
VMM – Division Water Reporting	14	/	14
MOW – Division Maritime Access	/	9	9
Total	656	722	711

**Table 1: Number of supervisors per regional supervisory body in 2012, 2013 and 2014**

In order to consider table 1 in the right context, the following marginal comments need to be made:

- ▶ In 2014, the Secretary General of the Department of Environment, Nature and Energy did not carry out any supervision, since no exceptional circumstances occurred in 2014 which required his authority. Therefore, the Secretary General of the Department of Environment, Nature and Energy is not included in the tables and graphs.
- ▶ The Agency for Nature and Forests (ANB) reported a total number of 162 appointed supervisors for 2014. However, this number does not include the 96 supervisors of the Policy Division of the Agency who only have a right of access, but are not authorised to identify environmental infringements or environmental offences.

It can be deduced from table 1 that a total of 711 regional supervisors were appointed in 2014. This is slight decline compared to the 722 regional supervisors in 2013. This decline is largely due to the fact that the Flemish Agency for Care and Health has submitted no figures about the number of supervisors in 2014.

The table demonstrates the wide variety of entities within which the supervisors are employed, and the

differences in the number of supervisors per entity. When drawing up the Environment Enforcement Act, the intention was to increase the chance of being caught for certain offences such as, for example, dumping waste by deploying more supervisors, an approach that is described as 'many eyes in the field'. As a consequence of this, civil servants from policy areas other than the Environment, Nature and Energy Policy Area have been designated to combat the problem of waste. These are primarily staff of the Mobility and Public Works Policy Area. The latter combine their duty as environmental supervisor with other tasks.

### 2.1.2 Efforts related to environmental enforcement duties

As already stated in previous environmental enforcement reports, the way in which the regional enforcement bodies organise their enforcement duties varies strongly. Some enforcement actors have appointed a lot of supervisors, while the environmental enforcement duties are rather limited. There are also bodies where the supervisors are engaged almost full-time in the implementation of environmental enforcement duties. This means that the number of appointed supervisors does not provide an accurate picture of the enforcement duties that are actually carried out. The regional supervisory authorities are



therefore again requested to indicate how many full-time equivalents (FTE) were deployed in 2014 for enforcement duties. Despite the fact that the Environment Enforcement Act does not state how many FTEs should be deployed on enforcement duties, the designated FTE can give a clearer and more balanced picture of the actual efforts in the area of environmental enforcement.

The following table not only gives a picture of the total amount of time the regional supervisors dedicated to environmental enforcement duties - in FTEs - in 2014, but also of the number of FTEs that were dedicated to the administrative support of environmental enforcement duties by non-supervisors. The administrative support of

environmental enforcement duties pertains to the amount of time dedicated within the framework of duties relating to environmental enforcement by non-supervisors. In this context reference can be made, for instance, to policy-based support (drawing up reports and programmes), purely administrative tasks (drawing up correspondence, organising inspections), and legal support (developing internal guidelines for supervisors). By way of comparison, the relevant data on the total FTEs dedicated to environmental enforcement duties from 2012 and 2013 are shown in table 2.

## EFFORTS

REGIONAL ENFORCEMENT ACTOR	Total FTE dedicated to environmental enforcement duties			FTE dedicated by supervisors to environmental enforcement duties	FTE dedicated by non-supervisors to administrative support of environmental enforcement duties
	2012	2013	2014	2014	2014
ALBON	2.7	2.7	2.7	2.5	0.2
AMI	84.3	80.93	91.8	82.5	9.3
AMV	/	2	2	1.75	0.25
ANB	40.4	39.4	39.3	39.3	0
AWZ	2	1	0	/	/
AWV	/	0.95	1	0.8	0.2
VAZG	0.89	0.79			
NV De Scheepvaart (Shipping Agency)	/	/	/	/	/
OVAM	6.8	9.8	9.9	6.9	3
VLM	33.2	27.6	27.42	27.42	0
VMM – Division Operational Water Management	/	0.6	0.2	0.1	0.1
VMM – Division Water Reporting	0.2		0.4	0.2	0.2
MOW – Division Maritime Access		0	0	0	0
<b>Total</b>	<b>170.49</b>	<b>165.77</b>	<b>174.72</b>	<b>161.47</b>	<b>13.25</b>

Table 2: Efforts of the regional supervisory body related to environmental enforcement duties in 2012, 2013 and 2014

To put table 2 in its right context, the following marginal comments need to be made:

- ▶ The 39.3 FTE spent by supervisors on environmental enforcement duties with the Agency for Nature and Forests (ANB) include 4.1 FTE administrative support, but exclude the deployment of FTE by the Management Division of the ANB (foresters, regional managers etc.); that deployment is estimated at 8 FTE but cannot be calculated precisely because those involved generally carry out other administrative and supervisory duties simultaneously.
- ▶ Waterwegen en Zeekanaal (the Waterways and Sea Canal Agency) (AWZ) stated that the inspections carried out are part of the daily duties of the supervisor in the context of supervision on property/territory of the agency. It is thus difficult to state how much time (expressed in FTE) is actually spent on these inspections.
- ▶ The Flemish Land Agency (VLM) stated that it could call on 42 supervisors of which 32 effectively had inspection duties as their main task. In total, these supervisors deployed 35.9 FTE. These 35.9 FTE represented 27.42 FTE inspectors in the region, 2 FTE regional cell heads, 4.5 FTE central Brussels management (supervisors in Brussels that mainly take care of management, coordination and administrative support) and 2 FTE administrative staff in the region (supervisors who mainly perform administrative duties).
- ▶ NV De Scheepvaart (the Shipping Agency) indicated that the environmental enforcement duties that were performed by the supervisors were part of an overall package of supervisory tasks as stated in the Shipping Regulations of 1935. The supervisors perform the environmental enforcement tasks during their daily duties and the time spent on these environmental enforcement tasks were not registered separately by the Shipping Agency. In addition, it was stated that the administrative and technical support of the supervisors was, within the Shipping Agency, spread over the Facility department (general services department) and Waterway management (environmental coordination department). It is difficult to estimate the exact time spent on the performance of

supporting duties. The seriousness and scale of an environmental offence is crucial in this. For example, with highly complex contaminations, the presence and the assistance at consultation meetings concerning monitoring and enforcement is an important factor in this package of tasks, and this can differ considerably from offence to offence.

Once again, similar to previous years, it can be stated for 2014 that a wide variety exists between the various regional supervision actors concerning the deployed FTE that is spent on enforcement duties. Certain actors spend a broadly deployed FTE on enforcement tasks, such as, for example, the AMI, while other environmental enforcement actors only spend a limited deployed FTE on environmental enforcement tasks, such as, for example, the FEA.

In comparison with 2012 and 2013, the total deployed FTE spent on environmental enforcement tasks has increased. This is related to the increase of the deployed FTE at the Environmental Inspectorate Division (AMI).

### **Number of inspections**

In order to better contextualise the efforts in the field of environmental enforcement by the regional supervisory agencies, they were asked how many environmental enforcement inspections were carried out by these supervisors between 1 January 2014 and 31 December 2014. The definition of inspection reads as follows: "An inspection in the context of environmental enforcement is checking with a legal person and/or a natural person that is subject to legal obligations from the environmental law as to whether that legal person or natural person also actually complies with these legal obligations. This can be divided into inspections on site or inspections of documents"<sup>9</sup>. Table 3 provides an overview of the total number of environmental enforcement inspections carried out by the supervisors in 2014. To provide a comparison, the total number of environmental enforcement inspections carried out in 2012 and 2013 per regional supervisory body is also shown.

<sup>9</sup> VHRM glossary p.10: <http://www.vhrm.be/toezichthouders/trefwoordenlijst>

## NUMBER OF ENVIRONMENTAL ENFORCEMENT INSPECTIONS

REGIONAL ENFORCEMENT ACTOR	2012	2013	2014
ALBON	263	267	272
AMI	11,780	11,884	11,964
AMV	409	720	949
ANB	7,754	8,479	9,087
AWZ	/	/	/
AWV	/	193	201
VAZG	4,613	3,491	
NV De Scheepvaart (Shipping Agency)	/	/	/
OVAM	700	354	402
VLM	3,209	3,665	4,658
VMM – Division Operational Water Management	/	15	/
VMM – Division Water Reporting	22		25
MOW – Division Maritime Access		0	0
<b>Total</b>	<b>28,487</b>	<b>29,068</b>	<b>27,558</b>

**Table 3: Total number of environmental enforcement inspections that are carried out by supervisors**

To put the above table in its right context, the following marginal comments need to be made:

- ▶ The Shipping Agency reported that, for the time being, no targeted environmental enforcement inspections had been carried out in 2014. The official reports that were drawn up in 2014 each time pertained to offences that were identified in implementation of the regular day-to-day duties of the supervisors.
- ▶ The Public Waste Agency of Flanders (OVAM) indicated that, apart from the 700 environmental enforcement inspections carried out by its own supervisors and the 118 supervised inspections, support was given during 613 environmental enforcement inspections that were carried out by external inspection services, the police, Customs, ...
- ▶ Waterwegen en Zeekanaal (the Waterways and Sea Canal Agency) (AWZ) stated that the inspections carried out are part of the daily duties of the supervisor in the context of supervision on property/territory of the agency. It is therefore difficult to state how many inspections were actually made.
- ▶ The Operational Water Management Division of the Flemish Environment Agency (VMM-OWM) indicated that it combines environmental enforcements inspections with its supervisory and testing activities along the unnavigable watercourses. The 20 area administrators of the department provide permanent supervision along the waterways. This supervision acts, in the first place, to discourage potential offenders. Where necessary, the administrators work actively to raise awareness and to offer guidance in order to prevent or eliminate environmental breaches. Should the soft approach have no effect or for offences with clear environmental damage, the area administrators inform the supervisors of the department in order to issue a citation for the offence.
- ▶ The Flemish Land Agency (VLM) stated that, with regard to the total number of environmental enforcement inspections performed in 2014, 4,784 reports were drawn up (both inspection reports and official reports), of which 4,658 initial and 126 follow-up reports. These include 556 official reports of specimens, drawn up for the sampling of manure.

It can be concluded from the above table that the regional supervisors carried out 27,558 environmental

enforcement inspections. This figure is slightly lower than that of last year. This decline is due to the fact that the figures concerning the inspections performed by the Health and Care Agency in 2014 are not available. This entity underwent a transition in 2014-2015 whereby the reporting of enforcement was shifted to the background. The other entities all noted an increase in the number of inspections<sup>10</sup>.

At the Flemish Land Agency, the increase of 993 inspections compared to the previous year is due to the VODKA action. This Dutch acronym stands for Responsible Management of Animal fertilizers, Artificial fertilizers and other Chemical fertilizers. This action, during which the spreading of manure was inspected, was accompanied by a greater presence on site of the inspectors of the Flemish Land Agency. A significant increase in inspections can also be seen at the AMV. At the end of 2010, the AMV, in the context of the Directive 2010/31/EU of the European Parliament and the Council of 19 May 2010 concerning energy performance of building, recruited three staff members. They are responsible, inter alia, for the supervision of gaseous and liquid fuels engineers. In the course of 2013, a large number of inspections were carried out on these engineers, although fewer than in 2014. The reason for this is that, in 2013, this material was still relatively new for the new staff members, so that the year should be regarded as an induction period. By 2014, the staff members were fully trained, which explains the larger number of inspections.

The increasing trend can be seen in all entities. The conclusion can be drawn that five years after the Environment Enforcement Act came into force, the theme of enforcement has gained in importance. In line with the number of designated supervisors and the FTE deployed for enforcement duties, one can, however – again in 2014 - identify a large diversity between the number of inspections performed by the various regional supervisory agencies<sup>11</sup>. For this reason, table 4 not only reflects the number of supervisors, the total number of FTEs dedicated to enforcement duties and the number of environmental enforcement inspections performed by the supervisors, but also makes a comparison by dividing the number of performed environmental enforcement inspections by the number

of supervisors, in order to present the average number of inspections per supervisor. Because an inspection is often more than just carrying out the inspection and visiting the site concerned the number of inspections carried out by supervisors will be divided by the total number of FTEs dedicated to enforcement duties per regional body, in order to present an average number of inspections per FTE and to achieve a more balanced picture. In this way account is also taken of the preparations of each inspection and the administrative processing. For comparison, table 4 shows the average number of inspections per supervisors and the average number of inspections per FTE in 2012 and 2013.

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<sup>10</sup> If the figures from the Flemish Agency for Care and Health for 2012 and 2013 were not included in the calculation, an increase in the total number of environmental enforcement inspections could be determined. The total number of environmental enforcement inspections would then total 23,874 for 2012 and 25,577 for 2013.

<sup>11</sup> This includes both the number of FTEs dedicated by supervisors to environmental enforcement duties under the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors.

## EFFORTS ENVIRONMENTAL ENFORCEMENT DUTIES

REGIONAL ENFORCEMENT ACTOR	Number of supervisors	Total dedicated FTE	Number of environmental enforcement inspections	Average number of inspections per supervisor	Average number of inspections per FTE
ALBON	15	2.7	272	18	101
AMI	114	91.8	11,964	105	130
AMV	84	2	949	11	475
ANB	162	39.3	9,087	56	231
AWZ	62	0	/	/	/
AWV	59	1	201	3	201
VAZG	/	/	/	/	/
NV De Scheepvaart (Shipping Agency)	30	/	/	/	/
OVAM	112	9.9	402	4	41
VLM	42	27.42	4,658	111	170
VMM – Division Operational Water Management	8	0.2	/	/	/
VMM – Division Water Reporting	14	0.4	25	2	63
MOW – Division Maritime Access	9	0	0	0	0
<b>Total</b>	<b>711</b>	<b>174,72</b>	<b>27,558</b>	<b>39</b>	<b>158</b>
				2013: 40	2013: 175
				2012: 44	2012: 169

**Table 4: Efforts related to environmental enforcement duties 2014**

The above table shows that, in 2014, 39 inspections were carried out on average per supervisor. However, when considering this fact for each separate regional supervisory body, the picture is very diversified. In 2014, a supervisor of the Environmental Inspectorate Division carried out on average no less than 105 inspections, whereas this share was 2 inspections per supervisor with the Flemish Environment Agency (VMM), for instance. This discrepancy can be explained by the fact that for some supervisors environmental law enforcement is an exclusive duty, whereas for other supervisors enforcement is only a small part of their set of duties.

In comparison with previous years, it can be stated that the average number of inspections per supervisor has declined.

The average number of inspections per FTE is the total number of inspections performed weighted against the total FTE spent on enforcement duties. This figure gives

a more correct picture of the efforts of the regional enforcement actors in 2014. On average, the supervisors performed 158 inspections per FTE. This average was lower compared to the previous years, because the supervisors of the Care and Health Agency could not perform inspections in 2014. This entity underwent, as indicated above, a major reorganisation in 2014, which prevented the registration of reporting figures. The Environmental Licences Division (AMV) has a very high average number of inspections per FTE, namely 475, followed by the Agency for Nature and Forests, with an average of 231 inspections per FTE.

## 2.2 EVALUATION OF THE ENVIRONMENTAL ENFORCEMENT POLICY PURSUED BY THE POLICE

To draw up the present environmental enforcement report the Flemish High Enforcement Council for Spatial Planning and Environment again surveyed the federal and local police about their environmental enforcement activities. It was asked, among other things, how many official reports were drawn up by the federal and local police for environmental offences in the Flemish Region following reports, complaints or offenders being caught in the act between 1 January 2014 and 31 December 2014. More detailed information was also asked about the specific activities of the federal police in the context of environmental enforcement and about the activities of the supervisors appointed within the local police districts.

### 2.2.1 In general

Table 5 gives an overview of the types of official reports that were drawn up with regard to the environment by police forces in 2014. The figures include both the initial

official reports and the simplified official reports<sup>12</sup>. The fact that the simplified official reports are included as well explains the difference between the number of official reports drawn up by the police forces and the number of dossiers - drawn up by the police forces - received by the public prosecutor's offices (cf Chapter 4.1). The figures originate from the General National Database. The General National Database (Algemene Nationale Gegevensbank/ANG) is the whole of information systems of the integrated police force, the purpose of which is to support the duties of the judicial or administrative police, so as to guarantee a maximally structured and secured information management<sup>13</sup>.

In total, the police forces drew up 15,685 official reports in the Flemish Region in 2014. 97.5% of these official reports were drawn up by the local police and less than 2.25% by the federal police.

#### OFFICIAL REPORTS

TYPE OF BREACH	Units			Total
	Federal police	Local police	Other	
Waste by professional person	43	366	4	413
Waste shipment	15	109	0	124
Waste: licence-recognition	1	45	1	47
Waste by private person	72	3,071	1	3,144
Air pollution	5	390	0	395
Water pollution	20	174	0	194
Soil pollution	3	88	0	91
Environment Noise pollution	0	271	0	271
Environment flora fauna Destruction	0	260	0	260
Environment flora fauna Animal Welfare	8	804	2	814
Environment flora fauna Nature protection	4	197	3	204
Environment flora fauna Licence recognition	7	58	3	68
Other phenomena linked to environment	176	9,470	14	9,660
<b>Total</b>	<b>354</b>	<b>15,303</b>	<b>28</b>	<b>15,685</b>

Table 5: Official reports drawn up by police forces for environmental offences in the Flemish Region in 2014

<sup>12</sup> Simplified official reports are mainly drawn up for non-serious breaches, for instance with unknown offenders, which are not systematically referred to the public prosecutor's office.

<sup>13</sup> <http://www.lokalopolitie.be/5412/algemene-informatie/199-de-algemene-nationale-gegevensbank.html>

The majority of the identified breaches, namely 61.5%, referred to 'other phenomena linked to the environment'. This type of breach includes, among other things, breaches that do not fall within the scope of the Environmental Enforcement Act, such as breaches in the framework of spatial planning or fireworks fraud. The second largest category of breach is 'waste by private person'. This category represents 19.5% in the total number of identified breaches.

In comparison with the data from the Environmental Enforcement Report 2013 an increase can be observed in the number of official reports drawn up, namely 15,161 in 2013, but a decrease in relation to the 17,482 official reports in 2012. However, the ratio between the reporting authority (federal police, local police and other police services) remains more or less the same, just like the ratios between the different types of breaches.

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

The Flemish High Enforcement Council for Spatial Planning and Environment also surveyed the federal police about its activities in the field of environmental enforcement for the Environmental Enforcement Report 2014. It was asked, among other things, how many official reports were entered in the General National Database on Environmental Offences in 2014 where the identifying unit belonged to the federal police. These data were presented in previous table under 2.2.1. It was also asked, for instance, how many people within the federal police force had been actively involved in environmental law enforcement in the Flemish Region in 2014.

Within the federal police force 127 people were part of the Environmental Network in Flanders in 2014. The idea behind this Environmental Network is to exchange information about environmental breaches, offer mutual support, develop best practices together, and conduct large-scale investigations in an effective and efficient way. This network also includes 222 members of local police forces. However, the figure of 127 federal police staff who are actively involved in environmental enforcement is both an overestimation and an underestimation, since this figure is an extraction from the Environmental Network database. Not all people included in this database are still actively involved in

environmental enforcement. Conversely, it is also true that not all staff within the federal police who are involved in environmental enforcement are included in this network. The figure of 127 people should therefore be regarded as indicative only.

It is more accurate to say that in 2014 49 FTEs within the federal police force were actively involved in environmental enforcement in the Flemish Region. This concerned 8 FTEs within the Environment Division of the Directorate of Crime against Goods, 31 FTEs of research capacity within the Federal Judicial Police and 9 FTEs of phenomenon coordinators. These phenomenon coordinators, amounting to 10 in total, examine and monitor the phenomenon 'environmental crime'.

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

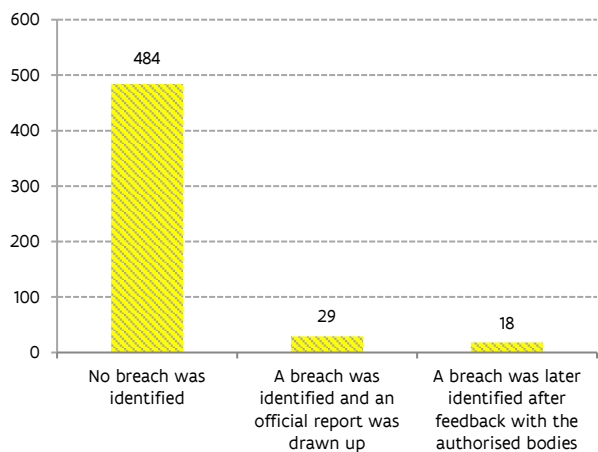
In 2014, a total of 354 initial official reports were entered in the General National Database on Environmental Offences, and this only on the territory of the Flemish Region and where the identifying unit belonged to the federal police force. These reactive environmental enforcement identifications were made following reports, complaints or offenders being caught in the act. These official reports did not only refer to environmental offences, but also to environment-related breaches.

### **Proactive inspections in the framework of waste shipments on the territory of the Flemish Region**

In addition to these reactive inspections, the federal police also carried out 531 proactive inspections in the framework of waste shipments on the territory of the Flemish Region in 2014. Within the federal police force it was decided to focus on waste which represents a serious threat to public health or the environment, and which generates huge (illegal) profits. This focus on inspections of waste shipments by the federal police is

related to the National Safety Plan 2012-2015<sup>14</sup> in which the federal government has decided to prioritise waste management fraud, among other things.

Graph 1 gives an overview of the 531 inspections of waste shipments that were carried out by the federal police in 2014.



**Graph 1: Proactive inspections (reported by the completion of an ECO form) of waste shipments on the territory of the Flemish Region in 2014**

No breach was identified during 484 inspections. For 29 of these breaches an official report was immediately drawn up at the time of completion of the ECO form<sup>15</sup>. It is possible that afterwards, after the data were checked by the administration and breaches were identified after all, more official reports were drawn up. Currently this has resulted in 18 extra breaches being identified. This was entered in graph 1 as 'A breach was later identified after feedback with the authorised bodies'. After the ECO form for waste has been completed, it is submitted to the Environment Service of the Federal Judicial Police for further analysis.

With regard to the figures of the waste transports, only those waste transports are included for which an ECO form was drawn up and submitted to the competent department within the federal police for further analysis. Therefore the inspections of waste transports for which no ECO form was drawn up or submitted cannot be

found in these figures, which means these figures are an underestimation.

In 2014, 451 inspections were performed by local police in connection with waste transports.

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

The aforementioned general section (2.2.1) on the police forces discusses the official reports that were drawn up by the local police and the federal police in 2014 with regard to a specific environmental theme. However, the activities of the local police supervisors are treated in this separate chapter, after the activities of the federal police. This has to do with the fact that the local police have distinct duties with regard to environmental law enforcement. On the one hand, police officers have been appointed as supervisors within a police district in some cities and municipalities. On the other hand, local police forces are in charge of basic police services and more specifically carry out all duties of the administrative and judicial police that are necessary to manage local events and phenomena that occur on the territory of the police district, as well as to fulfil some police duties of a federal nature. In this context they naturally enforce environmental law, but not as supervisors under the Environmental Enforcement Act. Within various police districts specialised environmental units can be set up or it can be opted to have one or more members of staff specialise in environment-related matters. These staff members are not always required to have supervisor status; they can also just work in the capacity of judicial police officers. It should also be mentioned that 222 people from the local police are part of the Environmental Network as described earlier with regard to the federal police.

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

<sup>14</sup> <http://www.polfed-fedpol.be/pub/pdf/NVP2012-2015.pdf>

<sup>15</sup> For each inspection of a waste shipment (including manure), the police officer draws up a document, called ECO form for waste (EFW). With this document part of the waste stream can be made visible.



Besides the appointment of a municipal supervisor among the municipality's own staff or by an intermunicipal association, it can be opted, possibly via a cooperation agreement, to appoint supervisors among the local police force to perform municipal environmental enforcement activities. Local police supervisors are, just like local supervisors, appointed within the municipality itself or within an intermunicipal association with the assignment to perform supervision in the facilities appearing on the VLAREM I categorisation for the following legislation:

- ▶ Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy: Title III – company-internal environmental care in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 28 December 1964 on air pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 26 March 1971 on the protection of surface waters against pollution, waste water discharges and the detection of any kind of pollution in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 18 July 1973 on noise pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Government Decree of 7 November 1982, Article 2.
- ▶ Royal Decree of 24 February 1977 on electronically amplified music.
- ▶ Article 5. Act of 23 December 2011 on the sustainable management of closed materials cycles and waste and the relevant implementing orders regarding nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 24 January 1984 containing measures with regard to groundwater management in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 28 June 1985 on environmental licences in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution.
- ▶ Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

The local supervisor can also identify breaches in relation to establishments classified into Category 1 in accordance with Appendix 1 to Title 1 of VlareM – within the framework of the aforementioned laws, acts and regulations – based on sensory perceptions, and to conduct investigations in the sense of Article 16.3.14 of the Environmental Enforcement Act.

In the survey of police districts, similar to that conducted among municipal supervisors (see 2.3.4.2), questions were asked about the number of inhabitants

in the police district, whether the police district has an appointed supervisor at its disposal, the number of, the amount of time dedicated by and the reporting of supervisors and the organisation of the supervisory activities within the local police force, and the number of inspections and identifications carried out, as well as the results linked to these inspections. The result of the performed inspections will be discussed in Chapter 3 'Evaluation of the application of the individual environmental enforcement instruments and safety measures'. This section will focus on the response rate, the number of supervisors appointed within local police districts and the registration with the Environmental Licences Division of the Department of Environment, Nature and Energy, the average amount of time dedicated by these supervisors, the number of inspections carried out following complaints and the number of inspections carried out at own initiative, the average number of inspections per supervisor and the average number of inspections per FTE. Whenever relevant, a comparison will be made between 2012 and 2013 on the basis of the data from the Environmental Enforcement Report 2013.

### Response from the local police concerning the request

By analogy with the previous Environmental Enforcement Reports, it was decided in favour of a breakdown by police district population. As a result, 5 police district categories will be used.

#### CATEGORIES

Police districts with a population of	Number of police districts in the category in question	Number of responding police districts per category in 2014
≤ 24,999	8	6
25,000 - 49,999	70	59
50,000 - 74,999	24	21
75,000 - 99,999	6	4
≥ 100,000	8	7
Total	116	97
		2013: 95
		2012: 91

**Table 6: Categories of Flemish police districts, including number of police districts per category and number of respondents per category**

The VHRM received a completed questionnaire from 97 of the 117 police districts in the Flemish Region. This is a response rate of almost 83%, which is an increase compared to the response rate of 81% for the Environmental Enforcement Report 2013 and 78% for the Environmental Enforcement Report 2012.

### Appointment of local police supervisors and amount of time dedicated by them

Article 16§1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy, in short the Environmental Enforcement Decree, stipulates that municipalities are required to have at least 1 supervisor at their disposal. This can be either a municipal supervisor or a Vlare officer, or a supervisor or a Vlare officer of an intermunicipal association, or a supervisor or a Vlare officer of a police district. A municipality with more than three hundred Category 2 plants in accordance with Title I of Vlare or with more than thirty thousand inhabitants if the number of plants is insufficiently known, are at least required to have two supervisors at their disposal. These can be either municipal supervisors, police district supervisors or supervisors of intermunicipal associations.

Since the possibility exists to appoint supervisors within the police districts, all the police districts in the Flemish Region were asked whether or not a supervisor was appointed within their police district, how many supervisors were appointed and how much time these supervisors dedicated to environmental enforcement duties within the framework of the Environmental Enforcement Act in 2012. Table 7 gives a general overview.

## SUPERVISORS AND ENVIRONMENTAL ENFORCEMENT DUTIES

	≤ 24,999	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	≥ 100,000	2014	2013	2012
Response	6	59	21	4	7	97	95	91
Police district with appointed supervisor	2	14	10	3	3	32	34	26
Police district without appointed supervisor	4	45	11	1	4	65	61	65
Number of appointed supervisors	6	18	19	4	12	59	56	45
Average number of supervisors per police district	3	1	2	1	4	2	2	2
Total amount of time dedicated to environmental enforcement duties by supervisor (FTE)	0.25	6.03	9.26	2.15	10	27.69	24.48	19.41
Of which FTEs dedicated to environmental enforcement duties by the supervisors within the framework of the Environmental Enforcement Act	0.25	5.23	7.11	2.15	8.00	22.74	20.46	16.77
Of which FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors	0.00	0.80	2.15	0.00	2.00	4.95	4.02	2.64
Average amount of time dedicated to environmental enforcement duties per supervisor (FTE)	0.04	0.34	0.49	0.54	0.83	0.47	0.44	0.43
Police district that has no insight into the amount of time dedicated per supervisor	1	2	1	1	0	5	/	4

**Table 7: Overview of the appointment of local police supervisors and efforts related to environmental enforcement duties in 2014 (per population)**

It can be deduced from the above table that 32 of the 97 responding police districts had a supervisor at their disposal within their own force in 2014. This is 33% of the total number of responding police districts. This is a slight decline compared to 2013, when nearly 36% of the police areas responding could involve a supervisor, but an increase compared to 2012, when 28.5% could involve a supervisor.

The total number of designated supervisors of the local police – spread over those police areas that effectively have appointed at least one supervisor – was, in 2012, 45, which means 1.73 supervisors per police area. For 2013, this average was 1.64 supervisors per police area and for 2014, 1.84 supervisors per police area can be calculated.

In 2014, a total of 27.69 FTEs were dedicated to environmental enforcement duties within the police districts that had appointed a supervisor. This is an increase compared to the total number of FTEs dedicated to environmental enforcement duties in 2013 and in 2012, namely 24.48 FTEs and 19.41 FTEs respectively. This increase can perhaps be explained by the increase of the total number of appointed supervisors in the police areas.

In 2012, 2013 and 2014, more than 80% of these FTEs were spent by supervisors on environmental enforcement duties in the framework of the Environment Enforcement Act, while less than 20% was spent on administrative support by non-supervisors.

The average amount of time<sup>16</sup> dedicated by each local police supervisor to environmental enforcement duties - which also includes the FTEs dedicated to administrative support - amounted to 0.43 FTEs in 2012, to 0.44 FTEs in 2013 and to 0.47 FTEs in 2014. This means that the average local police supervisor dedicates just less than half of his or her time to the implementation of environmental enforcement duties under the Environmental Enforcement Act.

Since there was an average of 1.73 supervisors per police district with an appointed supervisor in 2012, an average amount of time<sup>17</sup> of 0.74 FTEs was dedicated to enforcement duties in police districts that appointed a supervisor within their own force. This ratio amounted to 0.72 FTEs in 2013 and to 0.86 FTEs in 2014.

## Environmental enforcement inspections carried out by local police supervisors

In order to gain an insight into the activities of local police supervisors, table 8 shows the total number of environmental enforcement inspections that were carried out per category of police districts, as well as the average number of environmental enforcement inspections per supervisor and per FTE. The survey explicitly asked about the number of environmental enforcement inspections that were carried out within the framework of the Environmental Enforcement Act by this/these police district supervisor(s) between 1 January 2014 and 31 December 2014. Table 8 gives an overview of this. In addition, for comparison, these data are also shown for 2012 and 2013.

### ENVIRONMENTAL ENFORCEMENT INSPECTIONS

	≤ 24,999	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	≥ 100,000	2014
Response	6	59	21	4	7	97
Number of appointed supervisors	6	18	19	4	12	59
Number of carried out environmental enforcement inspections	26	1,876	827	36	2,135	4,900
Average number of environmental enforcement inspections per supervisor	4	104	44	9	178	83
2013	7	70	50	35	338	85
2012	0	53	79	46	131	70
Average amount of time dedicated to supervisory duties per supervisors (FTE)	0.72	5.79	2.29	2.25	14.83	1.41
2013	0.10	0.24	0.58	0.23	1.17	0.44
2012	0	0.34	0.57	0.49	0.56	0.43
Average number of environmental enforcement inspections per FTE	104	311	89	17	214	177
2013	70.00	297	86	124	290	195
2012	0	155	183	93	235	161

Table 8: Overview of efforts related to environmental enforcement duties by local police supervisors (according to population) in 2014

<sup>16</sup> The average amount of time dedicated per supervisor is the total number of indicated FTEs dedicated to environmental enforcement duties per police district category, divided by the total number of indicated appointed supervisors per police district category.

<sup>17</sup> This amount of time dedicated is calculated by multiplying the average amount of time each supervisor dedicates to supervisory duties by the average number

of supervisors per police district (which also actually appointed a supervisor). In this way a picture can be given of the average number of FTEs that are dedicated to environmental enforcement duties within a police district that actually appointed one or more supervisors.

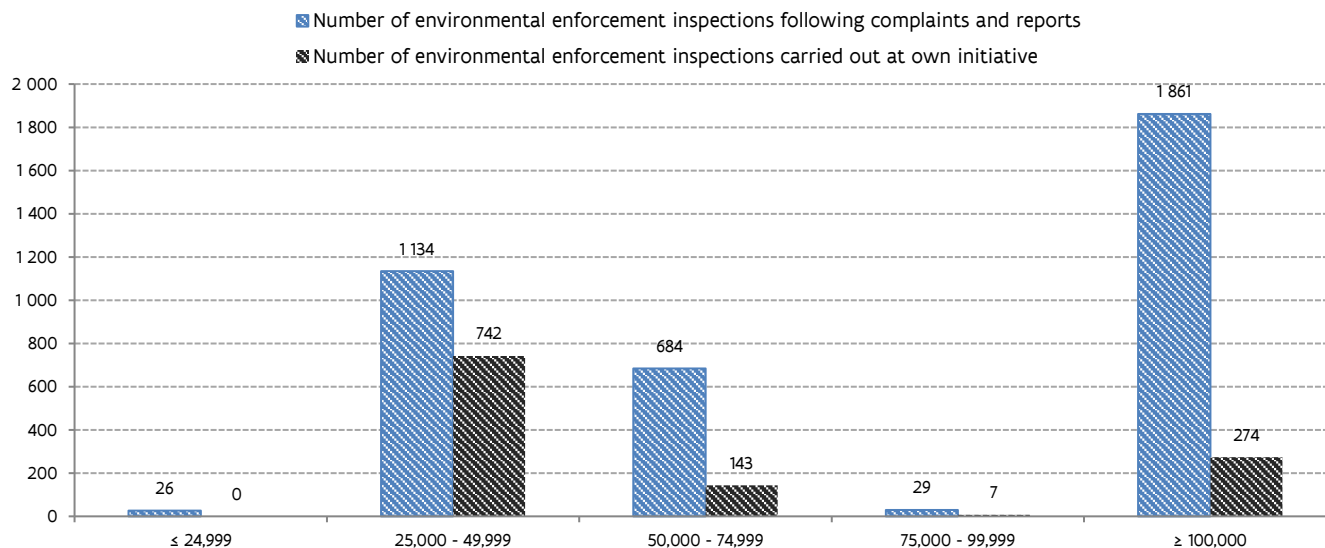
In 2014, 4,900 environmental enforcement inspections were performed by the 59 appointed supervisors with the local police. In 2012, 3,132 environmental enforcement inspections were performed by 45 supervisors of the local police and in 2013 4,762 by 56 supervisors. This means that not only the number of appointed supervisors increased in the past three years, but also the number of inspections performed by these supervisors.

The average number of environmental enforcement inspections per supervisor of the Local Police amounted to a total of 69.60 in 2012, 85 in 2013 and 83 in 2014. It can be deduced from this that the number of environmental enforcement inspections performed did not increase proportionately with the increase in the number of appointed supervisors of the local police.

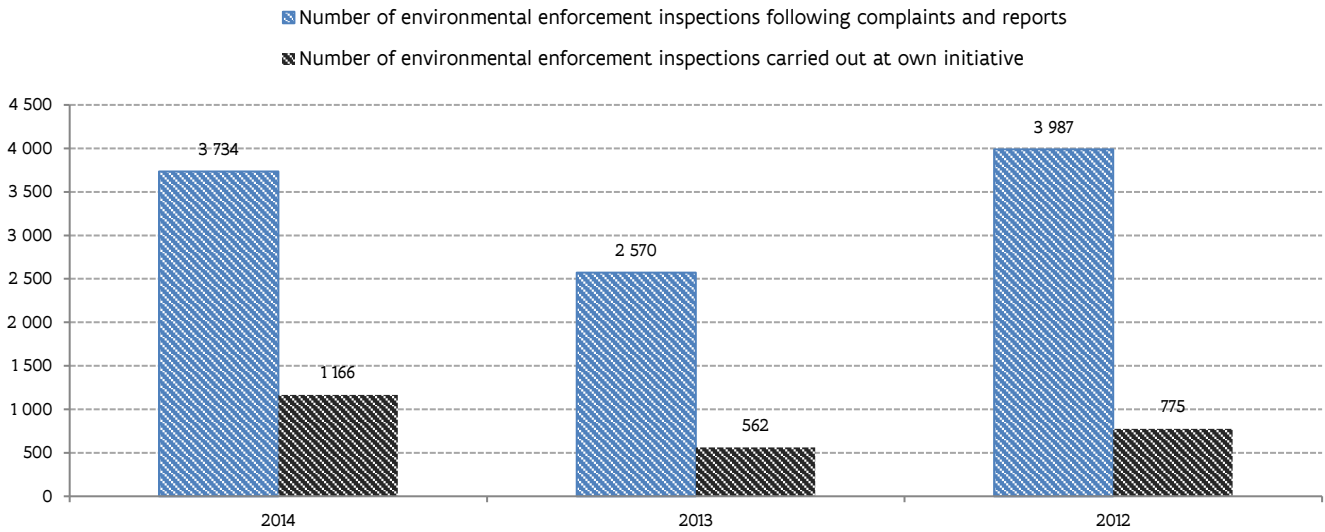
As in previous reports, it can again be seen that in 2014 there is a considerable difference between the various classes of police areas. In the smaller class of police areas, the average number of inspections per supervisor is 4, while in the larger classes of police areas a supervisor performed on average 178 environmental enforcement inspections in 2014.

Also the average number of inspections per FTE – which gives a more accurate picture of the efforts – shows noticeable differences between the various classes of police areas. In 2014, only 104 inspections per FTE were performed in the smallest class of police areas, while in the police areas with more than 100,000 residents, an average of 214 inspections were carried out per FTE. Over the various classes of police areas, the average number of inspections per FTE in 2014 was 177. This signifies a rise compared to the 161 inspections per FTE in 2012, but a decline compared to the 195 environmental enforcement inspections per FTE in 2013.

The graphs below give an overview per category of the number of inspections that were carried out following complaints and reports and the number of inspections that were carried out at own initiative, for instance within the framework of a planned environmental enforcement campaign, in 2014. To provide a comparison, the total number of environmental enforcement inspections performed following complaints and reports and the number of environmental enforcement inspections carried out pro-actively is given for 2013 and 2012.



**Graph 2: Number and type of environmental enforcement inspections carried out by local police supervisors within the framework of the Environmental Enforcement Act in 2014**



**Graph 3: Number and type of environmental enforcement inspections carried out by local police supervisors within the framework of the Environmental Enforcement Act in 2012, 2013 and 2014**

In general, it can be concluded that, in 2014, 76% of the 4,900 environmental enforcement inspections performed were in response to complaints and reports. This means that almost  $\frac{1}{4}$  of the inspections were performed pro-actively. This is a strong increase compared to 2012 and 2013 when only 18% and 16% of the environmental enforcement inspections were carried out pro-actively. The conclusion that can be drawn from this is that the supervisors of the local police have operated in a more planned way compared to the figures stated in previous reports.

## 2.3 EVALUATION OF THE PURSUED LOCAL ENVIRONMENTAL ENFORCEMENT POLICY

### Provinces

#### 2.3.1 Provincial governors

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

- ▶ the Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ Flemish Parliament Act of 23 December 2011 on the sustainable management of closed materials cycles and waste;
- ▶ Articles 4 (operation without a licence) and 22 (operation Categories 2 and 3 without complying with the licensing requirements) of the Flemish Parliament Act of 28 June 1985 on environmental licences.

The provincial governors were asked to give an overview of the requests/petitions they received for the imposition of administrative measures, as well as of the number of administrative measures that were actually imposed following these requests/petitions. It was also asked to give the number of requests which the provincial governor received between 1 January 2014 and 31 December 2014 for the imposition of safety measures and the number of safety measures that were actually imposed.

#### Administrative measures

Provincial governors can be requested or petitioned to impose administrative measures. Requests for the imposition of administrative measures are to be understood as requests from supervisors to the provincial governor to take administrative measures. On the other hand, administrative measures can also be the subject of a petition for imposition by people who suffer direct loss as a result of an environmental infringement or environmental offence, people who have an interest in this environmental infringement or environmental

offence being controlled, and legal persons as referred to in the Act of 12 January 1993 on a right of action with regard to the protection of the environment. This petition must be made by registered letter to the people authorised to impose administrative measures and by means of a petition, stating sufficient reasons, which shows that an environmental infringement or environmental offence is taking place, and in keeping with a strict procedure with short terms.

For this environmental enforcement report, the VHRM has received a response from the provincial governors of Antwerp, Limburg and West-Flanders. These three provincial governors all stated that they had received no requests/petitions about imposing administrative measures in 2014. Also, no administrative measures were imposed in 2014 by these three provincial governors.

The previous environmental enforcement reports also showed that these possibilities, both submitting requests/petitions about imposing administrative measures and actually imposing administrative measures by the provincial governors, are hardly used. Since the introduction of the Environment Enforcement Act, those provincial governors replying received only 14 requests/questions with a view to imposing administrative measures. In addition it can be stated that only in 2011 did the provincial governor of Limburg impose 1 administrative measure in the form of an administrative coercion, whereby action was actually taken against an established environmental offence or an environmental breach.

It can be concluded that the instrument 'requests/petitions for the imposition of administrative measures' addressed to the provincial governors and the actual imposition of administrative measures by provincial governors is hardly to never used. On the one hand, because the supervisors - either regional or local - are better placed to impose administrative measures themselves, since the supervisors can act independently and neutrally (cf Article 16.3.3 of the Environmental Enforcement Act) and with the required expertise, qualifications and abilities (cf Article 16.3.2 of the Environmental Enforcement Act) instead of submitting a request to that end to the provincial governor. Another

or additional explanation could be that third parties which can file petitions for the imposition of administrative measures with the provincial governor are not informed about this possibility and in the first instance opt to contact the environmental department of the municipalities or the local police (primary monitoring) in order to reach the supervisor. Another reason may be the lack of capacity, support, personnel or experience which the governors were faced with to actually implement the new competences under the Environmental Enforcement Act. Therefore, it may have been opted to have the supervisors themselves impose the administrative measures.

### Safety measures

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

Provincial governors - and therefore also mayors - can take safety measures by virtue of their function or upon a supervisor's request. For this reason, the provincial governors were asked how many requests for the imposition of safety measures they received and how many safety measures they actually imposed.

In 2014, none of the provincial governors received a request to impose a safety measure and none of the provincial governors imposed a safety measure by virtue of their office. This was also true in the preceding years.

### 2.3.2 Provincial supervisors

Article 16.3.1, §2, 2° of the Environmental Enforcement Act stipulates that personnel of the province can be appointed as supervisors by the Provincial Executive. These are the so-called provincial supervisors. With a view to this provision, the VHRM therefore considered it appropriate to ask the registrars of the five Flemish provinces about the appointment of these supervisors and their efforts with regard to environmental enforcement duties.

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

- ▶ Article 2 of the Act of 26 March 1971 on the protection of surface waters against pollution, Category 2 and 3 unnavigable watercourses and their appurtenances;
- ▶ Flemish Parliament Act of 23 December 2011 on the sustainable management of closed materials cycles and waste, Category 2 and 3 unnavigable watercourses and their appurtenances.

In the context of the inquiry for this environmental enforcement report, the VHRM received a reply from the five provinces concerning the provincial supervisors and their activities in 2014.

The provinces of Limburg, Flemish-Brabant, East-Flanders and West-Flanders stated that no supervisors had been appointed under the Environment Enforcement Act. Only the province of Antwerp could make use of provincial supervisors, more specifically of 7 provincial supervisors. In total, 0.2 FTE was spent on environment enforcement tasks pursuant to the Environment Enforcement Act. In addition, 0.2 FTE was spent on administrative support of environmental enforcement duties by non-supervisors. In 2014, one environmental enforcement inspection was performed in the province of Antwerp, and this in response to a complaint or report. In addition, two priority official reports<sup>18</sup> were drawn up.

### 2.3.3 Competences of provinces regarding unnavigable watercourses (other than those included in the Environmental Enforcement Act) by appointed provincial staff

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

- ▶ Act of 28 December 1967 on unnavigable watercourses;

<sup>18</sup> A priority official report is deemed to mean those official reports intended for determining offences stated in the protocol 'Priority memorandum prosecution



- ▶ Royal Decree of 5 August 1970 containing the general police regulations on unnavigable watercourses.

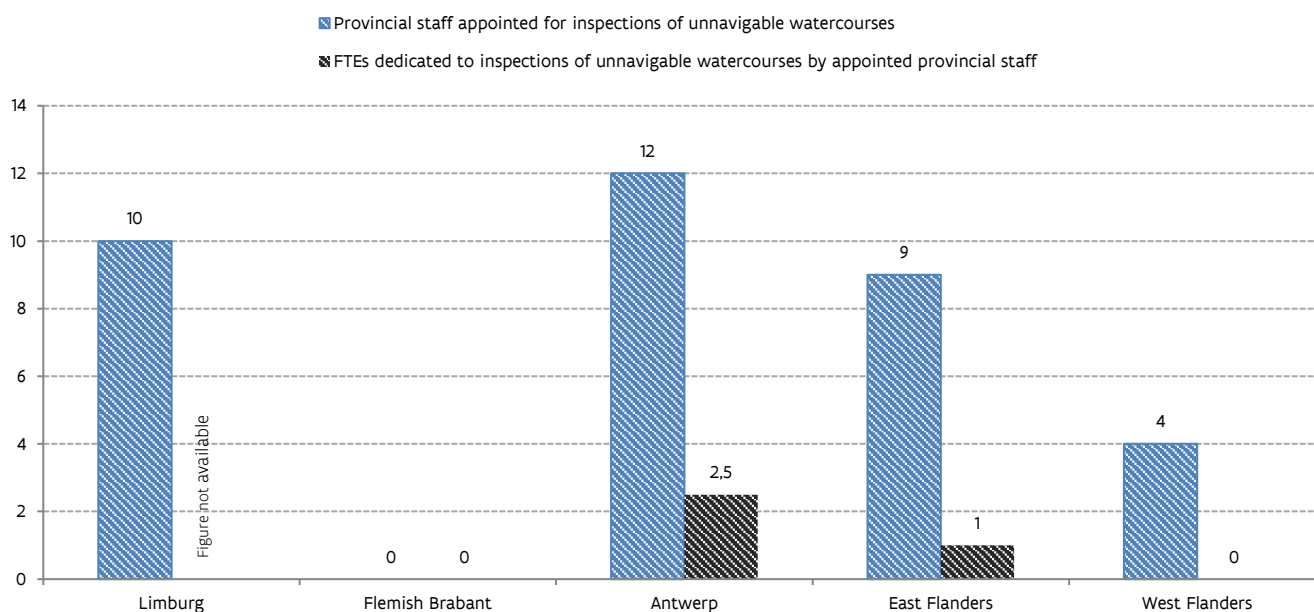
Despite the fact that this legislation has not been entered in the Environmental Enforcement Act, this supervision and any related inspections or inspectors are briefly discussed below for 2014.

There are also staff at the Flanders Environment Agency responsible for the supervision of the law of 28 December 1967 and the accompanying implementation decrees involving the unnavigable watercourses of the first category. No information was requested from the FEA about this.

### Appointed provincial staff

Graph 4 gives an overview of the number of the provincial staff members who are authorised to supervise and inspect the unnavigable watercourses, but also the number of FTEs that were dedicated to these inspections by these appointed provincial staff members in 2014.

In 2014, the Flemish provinces had 35 provincial employees at their disposal in the framework of the inspection on unnavigable watercourses. These 35 provincial employees are, however, spread over just 4 provinces, since Flemish-Brabant has not appointed a single provincial employee for unnavigable watercourses. Almost half of these provincial employees are employed in the province of Antwerp.



Graph 4: Number of appointed provincial staff and amount of time dedicated to unnavigable watercourses in 2014

The total deployed FTE dedicated to inspection concerning unnavigable watercourses by the provincial employees of the provinces was, in 2014, 3.5 FTE. However, it should be pointed out that the province of Limburg stated that the figure for what the FTEs deployed dedicated to these duties was not available and that the 4 provincial employees of the province of West-Flanders did not spend any FTE on these duties in 2014.

### Efforts with regard to unnavigable watercourses

Table 9 gives an overview of the number of inspections that were carried out by the provincial staff members with regard to unnavigable watercourses in 2014, the number of exhortations that were formulated during these inspections and the number of official reports that were drawn up following the identification of an offence during these inspections.

Relating to the figures above, the following aspects were stated by the provinces:

- ▶ The province of Limburg stated that in 2014 a dozen ad hoc inspections took place following reports by third parties or through breaches that were identified in the context of supplying water assessments and mandates. In addition, inspections were performed structurally by the inspectors of the works, who spent 50% of their time on site and in particularly during culling activities.
- ▶ The province of Antwerp stated that the inspections of unnavigable watercourses were part of the day-to-day work.

The province of East-Flanders stated, with regard to the number of reports for 2014, that the instrument for imposing reports in the context of the enforcement of the law on unnavigable watercourses is deployed very seldom by the administration. The administration is, after all, of the opinion that irregularities are better tackled by serving exhortations on the offenders. In addition, there are problems of a legal nature that undermine the efficacy of drawing up official reports:

- ▶ The reports drawn up have an evidential value of information, in contrast to the (powerful) reports that are drawn up under the Environment Enforcement Act that has reports that have a special evidential value to the contrary.
- ▶ Non-compliance with the law on unnavigable watercourses is a 'breach'. Consequently, the time limits are very short. Furthermore, the fine that can be imposed is very limited. Both elements mean that prosecution of breaches under the law on unnavigable watercourses does not have a priority with police courts and the official reports are frequently dismissed.

This problem could perhaps be helped if the law on unnavigable watercourses were modernised, a process that will be commenced shortly.

### UNNAVIGABLE WATERCOURSES

EFFORTS OF APPOINTED PROVINCIAL STAFF MEMBERS WITH REGARD TO UNNAVIGABLE WATERCOURSES	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Number of inspections of unnavigable watercourses	/	0	/	360	0
Number of official reports drawn up during these inspections of unnavigable watercourses	0	0	0	0	0
Number of exhortations formulated during these inspections of unnavigable watercourses	20	0	30	50	0

**Table 9: Number of inspections of unnavigable watercourses in 2012 and number of exhortations formulated and official reports drawn up following these inspections**

Table 9 shows that in 2014, 360 inspections were carried out concerning unnavigable watercourses in the province of East-Flanders. The other provinces stated that they had not carried out inspections or could not report on the number of inspections performed. In not a single province was an official report drawn up; exhortations were, however, formulated in response to inspections of unnavigable watercourses in the provinces of Limburg, Antwerp and East-Flanders, namely 20, 30 and 50 respectively. For the province of East-Flanders, the calculation can be made that an exhortation was drawn up for 14% of the inspections of unnavigable watercourses.

Table 10 gives an overview of the breaches that were identified by the provinces in 2012 following inspections of unnavigable watercourses.

The table indicates that a total of 100 breaches were identified in 2014. Despite this large number of breaches, there were – as emerges from the previous table – no official reports drawn up in this period. 32% of the breaches related to damage to the banks and 10% related to discharge in the watercourse

## UNNAVIGABLE WATERCOURSES

TYPE OF BREACH	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Damage to banks	2	/	10	20	/
Discharge into watercourse	5	/	5	0	/
Other	13	/	15	30	/

Table 10: Type of breaches regarding unnavigable watercourses in 2014

## Flemish cities and municipalities

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

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

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

- ▶ Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ Flemish Parliament Act of 23 December 2011 on the sustainable management of closed materials cycles and waste;

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

The second municipal actor – the municipal supervisor – was assigned the duty of monitoring compliance with the following legislation, just like the Local Police supervisors and the supervisors of the intermunicipal associations:

- ▶ Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy: Title III – company-internal environmental care in relation to nuisance-causing plants classified into

Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.

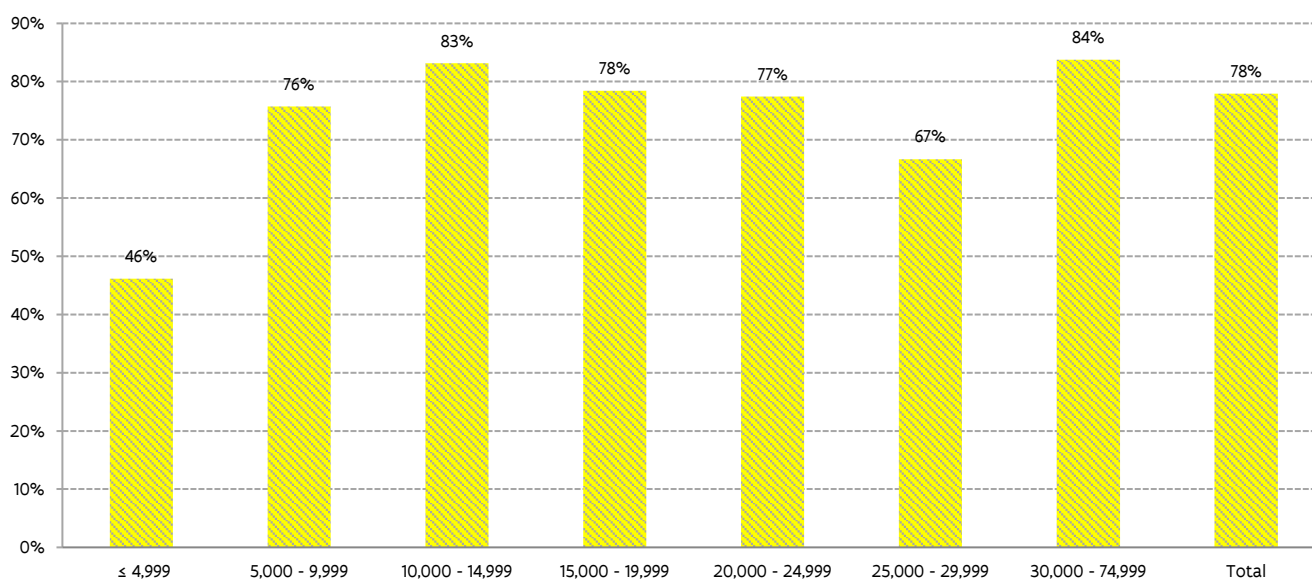
- ▶ Act of 28 December 1964 on air pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 26 March 1971 on the protection of surface waters against pollution, waste water discharges and the detection of any kind of pollution in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Act of 18 July 1973 on noise pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Government Decree of 7 November 1982, Article 2.
- ▶ Royal Decree of 24 February 1977 on electronically amplified music, Article 5.
- ▶ Act of 23 December 2011 on the sustainable management of closed materials cycles and waste and the relevant implementing orders regarding nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 24 January 1984 containing measures with regard to groundwater management in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 28 June 1985 on environmental licences in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution.
- ▶ Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer in relation to nuisance-causing plants classified into

Categories 2 and 3, as well as unclassified infringements in the open countryside.

- ▶ Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

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

### 2.3.4 Mayors



**Graph 5: Response rate in percentages of the mayors of the Flemish cities and municipalities per category of municipalities**

The survey of the mayors of the cities and municipalities in the Flemish Region ran parallel with the survey of the municipal supervisors for the present Environmental Enforcement Report. The mayors were asked to report on their activities within the framework of the imposition of administrative measures and safety measures in 2014.

#### Response

The Flemish High Enforcement Council for Spatial Planning and Environment received a response from 240 mayors in the Flemish Region (on a total of 308). This is a response rate of 78%. The VHRM has noted an increasing level of response since its first Environmental enforcement report (EER2009). For the EER2009, this response was 60%, for the EER2010, nearly 64%, for the EER2011 almost 73% and for the EER2013, slightly more than 74%. This ever-increasing level of response means that the data in the environmental enforcement reports are becoming more representative and thus a more accurate picture can be given of the various facets of the local environmental enforcement landscape.

#### Administrative measures

As indicated earlier, the mayors in the Flemish Region have the authority to impose administrative measures. This authority can be exercised following a relevant request or petition. However, the mayors can also take administrative measures by virtue of their office.

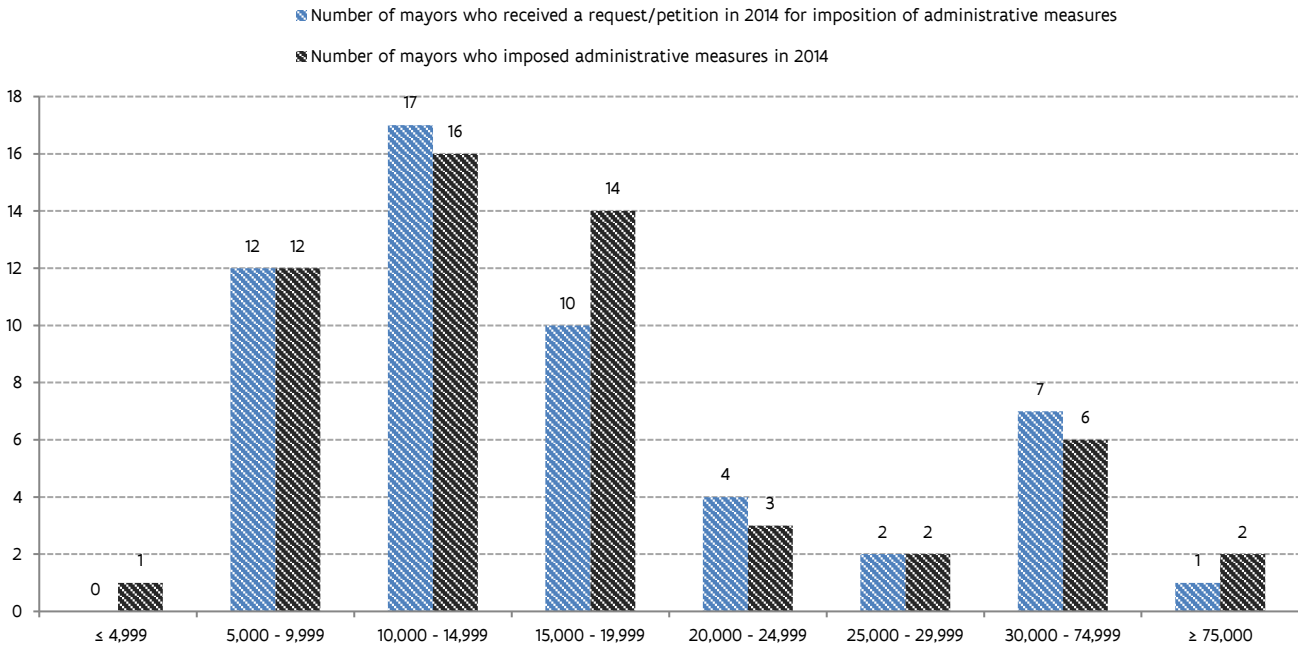
'Requests for the imposition of administrative measures' are to be understood as any requests to impose administrative measures from regional supervisors, municipal supervisors, local police supervisors, provincial governors...to the people as referred to in Article 16.4.6 of the Environmental Enforcement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

Moreover, administrative measures can be the subject of a petition for imposition by people who suffer direct loss as a result of an environmental infringement or environmental offence, people who have an interest in this environmental infringement or environmental offence being controlled, and legal persons as referred to in the Act on a right of action with regard to the protection of the environment.

Graph 6 gives an overview of the number of responding mayors who received a request/petition to impose administrative measures and the number of responding

mayors who actually imposed an administrative measure in 2014.

Graph 6 shows that 53 of a total of 240 mayors that replied have received a question/request for the imposition of administrative measures in 2014. This means 22% of the mayors who replied. In addition, on the basis of the graph 6, it can be concluded that 56 mayors imposed administrative measures in 2014. This represents 23% of the mayors who replied. For comparison it can be stated that in the period 2010-2013, on average 1/5 (21.5%) of the mayors replying had received a request/petition for the imposition of administrative measures and 1/5 (20.75%) of the mayors who replied imposed an administrative measure.



**Graph 6: Number of responding mayors who received a request/petition to impose administrative measures and the number of responding mayors who imposed administrative measures in 2014**

Table 11 gives an overview of the number of questions for imposing administrative measures that the mayors received from the various enforcement actors and the number of requests for imposing administrative measures that were submitted to the mayors by third parties.

In total, the mayors collectively received 193 requests/petitions in 2014 concerning the imposition of administrative measures. 43% of these 193 requests/petitions were petitions from third parties. 57% on the other hand were requests for imposing administrative measures from various environment enforcement actors, the majority of which, namely half of the total of 110 questions to impose administrative measures, were posed by the municipal supervisors.

In comparison with the previous years, these 193 requests/petitions show a decline compared to the 286 requests/petitions to the mayors in 2013, but an increase compared to the 117 requests/petitions in 2010, 144 requests/petitions in 2011 and 169 requests/petitions in 2012. This increase can possibly be explained by the increase in the level of response in recent years

The mayors of the Flemish cities and municipalities were not only asked about the number of petitions and requests for the imposition of administrative measures they received in 2014, but also about how many and which types of administrative measures they actually imposed in that year.

The administrative measures that may be imposed are:

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

## ADMINISTRATIVE MEASURES

### REQUESTS/PETITIONS RECEIVED BY THE MAYOR REGARDING THE IMPOSITION OF ADMINISTRATIVE MEASURES, BY:

CITIES AND MUNICIPALITIES WITH A POPULATION OF:	Regional supervisors	Municipal supervisors	Intermunicipal association	Police district	Provincial supervisors	Third parties	2014
≤ 4,999	0	0	0	0	0	0	0
5,000 - 9,999	7	12	0	5	0	42	66
10,000 - 14,999	10	22	2	15	0	29	78
15,000 - 19,999	6	17	0	3	0	3	29
20,000 - 24,999	0	1	1	0	0	2	4
25,000 - 29,999	2	0	3	0	0	1	6
30,000 - 74,999	0	3	0	0	1	5	9
≥ 75,000	0	0	0	0	0	1	1
Total	25	55	6	23	1	83	193
2013	21	54	11	41	2	157	286

Table 11: Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2014

Table 12 give an overview of the types of administrative measures that were imposed by the mayors in 2014 and the number of these imposed administrative measures that were not implemented within the imposed term.

The table shows that the majority of the administrative measures imposed in 2014 were orders to regularisation, namely nearly 63% of the 166 administrative measures that were imposed. In addition, 20% of the total number of administrative measures were a prohibition order and 7% were administrative coercions. For 1/10 of the administrative measures, a combination of the various forms was used. The table also indicates that more than 11% of the administrative measures imposed were not implemented within the imposed period.

These findings reflect the findings in the Environmental enforcement report 2013, which contains a summary of the figures for the previous years. These show that for the period 2010-2013 the majority of the administrative measures, namely 61%, were orders to regularisation. In 18% of the cases, it was a prohibition order. The administrative measure that was deployed least – namely in only 4% of the cases – was the administrative coercion. A combined set of administrative measures was imposed in 17% of the total administrative measures imposed in the period 2010-2013. Similarly, 11% of the administrative measures imposed in this period were not implemented in the imposed period.

## ADMINISTRATIVE MEASURES

### ADMINISTRATIVE MEASURES IMPOSED BY MAYORS

CITIES AND MUNICIPALITIES WITH A POPULATION OF:	Prohibition order	Regularisation order	Administrative coercion	Combination (prohibition, regularisation, administrative coercion)	Total	It was not possible to have the measure carried out within the imposed term
≤ 4,999	1	0	0	0	1	0
5,000 - 9,999	9	16	1	3	29	3
10,000 - 14,999	13	28	4	7	52	6
15,000 - 19,999	4	46	6	3	59	3
20,000 - 24,999	0	3	1	1	5	3
25,000 - 29,999	2	4	0	0	6	0
30,000 - 74,999	4	5	0	2	11	4
≥ 75,000	1	2	0	0	3	0
<b>Total</b>	<b>34</b>	<b>104</b>	<b>12</b>	<b>16</b>	<b>166</b>	<b>19</b>
2013	41	109	11	38	199	20

Table 12: Number and type of administrative measures imposed by the mayors of the Flemish cities and municipalities in 2014



## Safety measures

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

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

Table 13 gives an overview of the number of responding mayors who received a request for the imposition of safety measures and the number of mayors who actually imposed a safety measure in 2014, either on the basis of a request or at their own initiative.

## SAFETY MEASURES

<b>CITIES AND MUNICIPALITIES WITH A POPULATION OF:</b>	Number of mayors who received a request for the imposition of safety measures in 2014	Number of mayors who imposed safety measures in 2014
≤ 4,999	2	1
5,000 - 9,999	3	3
10,000 - 14,999	6	8
15,000 - 19,999	3	4
20,000 - 24,999	0	0
25,000 - 29,999	0	0
30,000 - 74,999	3	2
≥ 75,000	0	1
<b>Total</b>	<b>17</b>	<b>19</b>
2013	18	17

**Table 13: Number of responding mayors who received a request to impose safety measures and the number of responding mayors who imposed safety measures in 2014**

The table shows that 17 of the 240 responding mayors received a request for the imposition of safety measures. This is 7% of the total number of responding mayors.

The number of mayors who actually imposed a safety measure following a request or by virtue of their office, is higher and amounts to more than 8% of the total number of responding mayors.

The mayors can impose safety measures by virtue of their office, but also following the request of a supervisor. Table 14 gives an overview of the number of requests that were submitted to the mayors in 2014 in the different categories of cities and municipalities and of which supervisors submitted these request.

## ADMINISTRATIVE MEASURES

### REQUESTS/PETITIONS RECEIVED BY THE MAYOR REGARDING THE IMPOSITION OF ADMINISTRATIVE MEASURES, BY:

CITIES AND MUNICIPALITIES WITH A POPULATION OF:	Regional supervisors	Municipal supervisors	Intermunicipal association	Police district	Provincial supervisors	Total
≤ 4,999	0	0	0	4	0	4
5,000 - 9,999	0	3	0	0	0	3
10,000 - 14,999	0	5	1	3	0	9
15,000 - 19,999	2	3	0	0	0	5
20,000 - 24,999	0	0	0	0	0	0
25,000 - 29,999	0	0	0	0	0	0
30,000 - 74,999	1	3	0	1	0	5
≥ 75,000	0	0	0	0	0	0
Total	3	14	1	8	0	26
2013	3	22	1	12	0	38

**Table 14: Number of requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2014**

The 17 mayors who received a request to impose safety measures in 2014 together received a total of 26 such requests. The majority, namely 54%, were made by municipal supervisors. The 8 requests to impose safety measures that were made by local police supervisors accounted for 31% of the total number of requests.

These 26 requests for the imposition of safety measures represent a decrease compared to the 38 requests that were made to mayors in 2013 and the 33 requests that were made to the mayors in 2012.

The mayors of the Flemish cities and municipalities were not only asked to indicate how many requests for the imposition of safety measures they received in 2014, but also how many and which types of safety measures they actually imposed in that year.

Table 15 gives an overview of the safety measures actually imposed by the mayors and of the types of safety measures that were imposed. The VHRM also requested, by analogy with the request for administrative measures, whether it was possible to have the measure implemented within the imposed term.

## SAFETY MEASURES

### TYPE OF SAFETY MEASURES IMPOSED BY THE MAYOR:

CITIES AND MUNICIPALITIES WITH A POPULATION OF:	The suspension or execution of works, actions or activities, immediately or within a given term	The prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	The complete or partial closure of a plant	The seizure, storage or removal of relevant objects, including waste and animals	No entry to or leaving of certain areas, grounds, buildings or roads	Total	It was not possible to have the measure carried out within the imposed term
≤ 4,999	1	1	1	1	1	5	0
5,000 - 9,999	2	0	0	1	0	3	0
10,000 - 14,999	8	1	2	9	3	23	1
15,000 - 19,999	3	1	1	0	3	8	1
20,000 - 24,999	0	0	0	0	0	0	0
25,000 - 29,999	0	0	0	0	0	0	0
30,000 - 74,999	3	0	1	3	0	7	0
≥ 75,000	2	2	1	0	0	5	0
<b>Total</b>	<b>19</b>	<b>5</b>	<b>6</b>	<b>14</b>	<b>7</b>	<b>51</b>	<b>2</b>
2013	20	11	5	13	4	53	

Table 15: Number and type of safety measures imposed by the mayors of the Flemish cities and municipalities in 2014

In 2014, 19 mayors imposed a total of 51 safety measures. This comes down to 2.68 safety measures per mayor in 2014. In 2013, this ratio was 3.11 and 1.83 in 2012.

37% of the safety measures imposed in 2014 related to the stopping or the execution of operations, actions or activities, either immediately or within a certain period. In 27% of the cases, the safety measures involved taking, storing or removing matters vulnerable to this, including waste and animals. Non-admittance or evacuation of certain areas, grounds, buildings or roads was imposed 7 times in 2014 as safety measure, which means 14%. These conclusions are similar to the data from the previous reports. After all, for the period 2010-2013 it could be concluded that the majority of the safety measures also involved the stopping or execution of the operations, actions or activities, immediately or within a specific period, namely 43%. Taking, storing or removing vulnerable objects, including waste and animals, formed 26% of the total number of safety measures in this period.

Furthermore, it can be observed that 4% of all the imposed safety measures of 2014 were not implemented within the imposed terms.

### 2.3.5 Municipal supervisors

To obtain an insight into the organisation and efforts regarding local environmental enforcement, the 308 Flemish cities and municipalities were asked via a questionnaire, by analogy with the previous Environmental Enforcement Reports, to provide information about the appointment of supervisors, the organisation of supervisory activities in the municipality, the number of environmental enforcement inspections carried out, as well as the result of these inspections. The results of the environmental enforcement inspections are discussed in Chapter 3 where an evaluation per enforcement instrument will provide an insight into this. The present chapter tries to give a picture of: the response of the municipalities to the VHRM questionnaire; the number of Category 1, 2 and 3 nuisance-causing plants; the appointment of supervisors by the Flemish cities and municipalities; the number of appointed supervisors per municipality; the amount of time dedicated to supervisory duties by supervisors; the organisation of supervisory activities in cities and municipalities and the number of inspections carried out per category of municipality, per supervisor, and per FTE in 2014.

#### Response

##### MUNICIPALITIES

	Number of municipalities and cities	Number of responding municipalities and cities
≤ 4,999	13	6
5,000 - 9,999	70	53
10,000 - 14,999	83	69
15,000 - 19,999	51	40
20,000 - 24,999	31	24
25,000 - 29,999	15	10
30,000 - 74,999	37	31
≥ 75,000	8	7
Total	308	240

**Table 16: Number of responding municipalities per category compared to the total number of municipalities per category in 2014**

The table shows that - by analogy with the response of the mayors - 240 municipalities completed the VHRM questionnaire. This is a response rate of almost 78% of the total number of municipalities in the Flemish Region. The response of the Flemish cities and municipalities has continually increased in recent years. Indeed, in 2013, this was 74%, in 2012 73% and in 2011 64%. Naturally, this increase is a positive element. As a result of this, the data in these reports become increasingly representative and a more accurate picture can be given of all facets of the environmental enforcement landscape.

#### Nuisance-causing plants per municipality

Cities and municipalities were asked how many licenced plants falling into Categories 1, 2 and 3 in accordance with Appendix I to Title I of Vlarem are located on their territory, and at what number they estimated the total of unlicensed nuisance-causing plants in their city/municipality in 2014. The purpose of this question was to gain insight into the number of nuisance-causing plants per municipality, as this is essential to draw up a good inspection plan and to estimate and evaluate the efforts made in the field of environmental supervision. In addition, the number of nuisance-causing plants falling into Category 2 is used as criterion to determine how many supervisors a municipality should have at its disposal. In order to avoid any confusion, the term 'unlicensed nuisance-causing plant' was defined as follows: These are plants that could be classified, on the basis of Vlarem, as Category 1, 2 or 3 plants, but have not yet been licenced as such.

Therefore, table 17 shows the total number of Category 1, 2 and 3 nuisance-causing plants for 2014, as well as the estimated number of unlicensed nuisance-causing plants. The table also gives the average number of nuisance-causing plants per category and the number of municipalities that have no clear information on the number of nuisance-causing and unlicensed plants on their territory.

## NUISANCE-CAUSING PLANTS

Number of respondents per population category	Category 1 plants			Category 2 plants			Category 3 plants			Unlicensed plants			
	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of category 1 plants	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of category 2 plants	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of category 3 plants	Total number according to survey	Average number per municipality	Number of municipalities that do not know the number of unlicensed plants or indicated that there were no unlicensed plants	
≤ 4,999	6	63	16	2	287	57	1	717	143	1	15	5	3
5,000 - 9,999	53	1,681	34	4	5,236	107	4	599	13	7	66	3	27
10,000 - 14,999	69	3,719	59	6	10,976	177	7	27,195	446	8	557	20	41
15,000 - 19,999	40	1,847	46	0	5,926	148	0	20,173	531	2	627	31	20
20,000 - 24,999	24	1,624	71	1	5,108	222	1	17,116	778	2	329	30	13
25,000 - 29,999	10	734	82	1	2,353	261	1	5,135	642	2	190	48	6
30,000 - 74,999	31	6,045	208	2	15,038	519	2	29,300	1,085	4	993	99	21
≥ 75,000	7	2,888	413	0	5,900	843	0	23,341	3,334	0	70	18	3
Total	240	18,601	83	16	50,824	227	16	123,576	577	26	2,847	27	134

Table 17: Number of nuisance-causing plants per category of municipalities in 2014

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

The above table shows that, in 2014, 224 of the total of 240 responding municipalities had a total of 18,601 Category 1 plants on their territory. On the other hand, 16 municipalities indicated not having any insight into the number of Category 1 plants on their territory. This means that a municipality in the Flemish Region has on average 83 Category 1 plants. However, when looking at each separate category, this average is much more differentiated. The municipalities in the smallest category have an average of only 16 Category 1 plants, whereas this rises to 2.888 Category 1 plants in the largest category of cities.

With regard to the Category 2 plants, it can be concluded that 224 of the 240 responding municipalities together had 50,824 Category 2 plants on their territory, which is an average of 227 Category 2 plants per municipality. Here as well, the picture differs strongly when looking at the separate categories. The smallest municipalities had an average of 57 Category 2 plants and the largest municipalities an average of no less than 843. Similar to Category 1 plants, all in all the number of Category 2 plants increases as the population grows.

A similar trend can be observed with regard to Category 3 plants. The number of municipalities that have no insight into the number of Category 3 plants on their territory is a bit higher than for Category 1 and Category 2 plants and amounts to 11% of the number of responding municipalities. In 2014, the other 214 municipalities together had 123,576 Category 3 plants on their territory, which is 577 per municipality.

A striking element is that no less than 106 of the responding municipalities indicated knowing about 2,847 unlicensed plants on their territory. As indicated earlier, these are plants that could be classified, on the basis of Vlareem, as Category 1, 2 or 3 plants, but have not yet been licenced as such. This comes down to an average of almost 27 nuisance-causing plants requiring

a licence per municipality which are in fact not legitimately operated, since no licence was granted (yet) or no notification was done yet (Category 3 plants). Therefore, it seems very logical to recommend that these municipalities focus their enforcement on these unlicensed nuisance-causing plants. After all, these municipalities are aware of violations against environmental law and should therefore be expected to take relevant action.

The other 141 responding municipalities reported not knowing the number of unlicensed plants or not having any such plants on their territory. However, a positive evolution can be seen. In 2013, the number of non-licensed installations was 3,829 or an average of 45 nuisance-causing plants or installations subject to licensing per municipality.

### **Number of local supervisors**

Article 16§1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy stipulates that municipalities are required to have at least one supervisor at their disposal within one year after the coming into effect of the aforementioned Decree, which was on 1 May 2010. This can be either a municipal supervisor, or a supervisor of an intermunicipal association, or a police district supervisor. Within two years of the coming into effect of this Decree on 1 May 2011, municipalities with more than three hundred Category 2 plants in accordance with Title I of Vlareem, or with more than thirty thousand inhabitants if the number of plants is insufficiently known, are required to have two supervisors at their disposal. This can be either municipal supervisors, or supervisors of intermunicipal associations, or police district supervisors. Based on the collected data, an analysis can be made of the degree to which the municipalities in the Flemish Region complied with these provisions of the Environment Enforcement Act concerning the appointment of supervisors in 2014.

The tables below show - using both the number of Category 2 nuisance-causing plants and the number of inhabitants - to what extent the municipalities had sufficient supervisors at their disposal in 2014.

## APPOINTMENT OF LOCAL SUPERVISORS

	Number of municipalities		
	Without supervisors	With 1 supervisor	With $\geq 2$ supervisors
> 300 Category 2 nuisance-causing plants	0	12	31
< 300 Category 2 nuisance-causing plants	2	86	93
No insight into the number of nuisance-causing plants	1	10	5
<b>Total</b>	<b>3</b>	<b>108</b>	<b>129</b>

**Table 18: Appointment of local supervisors on the basis of the number of nuisance-causing plants in 2012**

If the number of nuisance-causing plants is taken as the criterion for determining the number of supervisors which a municipality should have at its disposal - whether or not appointed within the municipality itself, through an intermunicipal association or within a police district - it can be concluded on the basis of the above table that at least 15 and at most 25 of the responding municipalities did not have sufficient supervisors at their disposal. This is minimum 6.5% and maximum 10.5% of the total number of responding municipalities. In comparison with previous years, there is no improvement. In 2013, these figures were also a minimum of 6.5% and a maximum of 9.17%.

If the number of Category 2 nuisance-causing plants is not precisely or insufficiently known, the number of supervisors which a municipality should have at its disposal can also be determined on the basis of the population. This situation is simulated in table 19. As soon as a municipality has more than 30,000 inhabitants, it should have at least 2 supervisors at its disposal.

Just like in the previous table, it is apparent from the above table that 3 municipalities did not yet have a supervisor at their disposal in 2014. This is 1.25 % of the total number of responding municipalities. This is an improvement compared to 2013 when 2.62% of the responding municipalities did not have a supervisor at its disposal.

## APPOINTMENT OF LOCAL SUPERVISORS

	Number of municipalities		
	Without supervisors	With 1 supervisor	With $\geq 2$ supervisors
$\leq 4,999$	1	4	1
5,000 - 9,999	0	32	21
10,000 - 14,999	2	32	35
15,000 - 19,999	0	24	16
20,000 - 24,999	0	8	16
25,000 - 29,999	0	3	7
30,000 - 74,999	0	4	27
$\geq 75,000$	0	1	6
<b>Total</b>	<b>3</b>	<b>108</b>	<b>129</b>

**Table 19: Appointment of local supervisors on the basis of the population in 2014**

If the number of inhabitants is used as the criterion for determining the legally defined number of supervisors, all municipalities with more than 30,000 inhabitants should have at least 2 supervisors at their disposal. The above table indicates that within the two largest categories (the municipalities with more than 30,000 inhabitants), 5 municipalities in 2014, just like in 2013, had only one supervisor at their disposal. This means that 13% of the municipalities with more than 30,000 residents did not comply in 2014 with the provision that there should be at least 2 supervisors at its disposal. In 2013, this percentage was still 17%, since 1 municipality with more than 30,000 residents did not have any supervisor at its disposal.

In addition it can be concluded that 3 other municipalities (in the category of municipalities with fewer than 30,000 residents) did not have a supervisor at their disposal. This means that 8 municipalities did not satisfy the provisions of the Environment Enforcement Act in 2014, which means slightly more than 3% of the total number of responding municipalities. This is an improvement compared to the 5% in 2013.

## Appointment of municipal supervisors and amount of time dedicated

The municipalities and cities in the Flemish Region were asked to report whether the municipality had a supervisor at its disposal in 2014, how many FTEs these had spent on environmental enforcement duties and how many FTEs were spent within their own municipality on administrative support in the context of the environmental enforcement duties by non-supervisors.

The following table gives an overview of the appointment and the amount of time dedicated by municipal supervisors per category of municipalities in 2014.

In total, 253 municipal supervisors were appointed in 2014. This is an average of 1.38 municipal supervisors per municipality with an appointed supervisor. However, this average differs strongly when looking at the different categories of municipalities. In the smallest category the average number of supervisors per municipality is barely 1, whereas in the largest cities this average rises to 4.43. It can be deduced from this that the larger the population, the more supervisors were appointed within the municipalities.

Within the municipalities that had 253 municipal supervisors at their disposal in 2014, a total of 63.05 FTEs were dedicated to environmental enforcement duties, of which approximately 73% by supervisors to environmental enforcement duties under the Environmental Enforcement Act and about 27% to the administrative support of environmental enforcement duties by non-supervisors.

The average amount of time per municipal supervisor dedicated<sup>19</sup> to environmental enforcement duties (this includes the FTEs dedicated to administrative support) amounted to 0.25 FTEs in 2014.

<sup>19</sup> The average amount of time dedicated per supervisor is the total number of reported FTEs dedicated to environmental enforcement duties per category of

### APPOINTMENT AND TIME DEDICATED BY MUNICIPAL SUPERVISORS

Response	Municipality with appointed supervisor	Municipality without appointed supervisor	Total number of appointed municipal supervisors	Average number of supervisors per municipality	Amount of time dedicated to supervisory duties			Average amount of time dedicated to supervisory duties by supervisors (FTEs)
					Total FTE	Of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	Of which FTEs dedicated to administrative support of environmental enforcement duties by non-supervisors	
≤ 4,999	1	1	1	1.00	0.02	0.02	0	0.02
5,000 - 9,999	37	0	37	1.00	5.73	4.55	1.19	0.15
10,000 - 14,999	53	2	60	1.13	11.34	8.34	3	0.19
15,000 - 19,999	32	0	37	1.16	11.65	7.36	4.29	0.31
20,000 - 24,999	19	0	26	1.37	3.07	2.41	0.66	0.12
25,000 - 29,999	8	0	14	1.75	3.12	2.11	1.01	0.22
30,000 - 74,999	26	0	47	1.81	10.54	7.30	3.24	0.22
≥ 75,000	7	0	31	4.43	17.58	13.75	3.83	0.57
Total	183	3	253	1.38	63.05	45.84	17.12	0.25

Table 20: Appointment and amount of time dedicated by municipal supervisors per category of municipalities in 2014

municipalities, divided by the total number of indicated appointed supervisors per category of municipalities.



This means that the average municipal supervisor is used for less than 1/4 for the implementation of environmental enforcement duties under the Environmental Enforcement Act. Since there are on average 1.38 supervisors per municipality, the average amount of time dedicated<sup>20</sup> to enforcement duties was 0.34 FTEs per municipality that had a supervisor at its disposal.

When looking at the separate categories of municipalities, however, a large diversity can be observed, both with regard to the average amount of time dedicated to environmental enforcement duties and in terms of the amount of time dedicated. In 2014, the average amount of time each municipal supervisor dedicated to environmental enforcement duties was 0.25 FTEs. In the largest municipalities (category of municipalities with more than 75,000 inhabitants) the supervisor dedicated an average of almost 50% of his or her time to environmental enforcement duties and the average amount of time these municipalities dedicated to environmental enforcement duties was 2.5 FTEs in total. However, the average amount of time dedicated per municipal supervisor as well as the amount of time dedicated per municipality strongly decrease as the number of inhabitants declines.

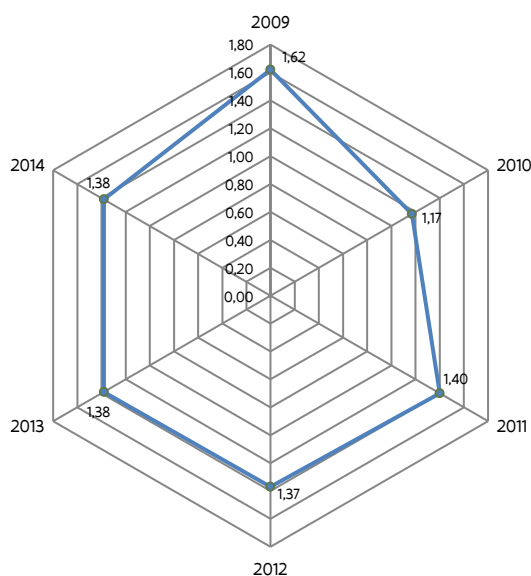
On the basis of the aforementioned data and those from the previous Environmental Enforcement Reports, it is possible to make a comparison of the average number of municipal supervisors per municipality that had a supervisor at its disposal. This is reflected in the graph 7.

The graph above shows that the average number of municipality supervisors has remained reasonably stable in recent years.

### Environmental enforcement inspections

In order to get an insight into the activities of municipal supervisors in 2014, table 21 not only shows the total number of environmental enforcement inspections carried out per category of municipalities, but also the average number of environmental enforcement inspections per supervisor, the average number of environmental enforcement inspections per FTE and the average amount of time dedicated to supervisory duties by supervisors in FTEs. The results of these inspections

will then be discussed in the evaluation of the individual enforcement instruments in Chapter 3. Table 21 takes into account the total amount of time dedicated to environmental enforcement duties by the municipalities, which means both the number of FTEs dedicated to enforcement duties by the supervisors and the FTEs dedicated to the administrative support of environmental enforcement duties. As indicated earlier, the idea is to provide a more complete picture of the implementation of an inspection.



Graph 7: Average number of supervisors per city/municipality 2009-2014

<sup>20</sup> This amount of time dedicated is calculated by multiplying the average amount of time each supervisor dedicates to supervisory duties by the average number of supervisors per police district (which also actually appointed a

supervisor). In this way a picture can be given of the average number of FTEs that are dedicated to environmental enforcement duties within a police district that actually appointed one or more supervisors.

## EFFORTS RELATED TO ENVIRONMENTAL ENFORCEMENT DUTIES

Response	Number of appointed municipal supervisors per municipality	Total amount of time dedicated to environmental enforcement duties (FTE)	Number of environmental enforcement inspections carried out	Average number of environmental enforcement inspections per supervisor	Average amount of time dedicated to environmental enforcement duties per supervisor (FTE)	Average number of environmental enforcement inspections per FTE
≤ 4,999	6	1	1	1	0.02	50
5,000 - 9,999	53	37	206	6	0.15	36
10,000 - 14,999	69	60	1,102	18	0.19	97
15,000 - 19,999	40	37	547	15	0.31	47
20,000 - 24,999	24	26	323	12	0.12	105
25,000 - 29,999	10	14	81	6	0.22	26
30,000 - 74,999	31	47	766	16	0.22	73
≥ 75,000	7	31	1,436	46	0.57	82
Total	240	253	4,462	18	0.25	71

**Table 21: Efforts related to environmental enforcement duties by municipal supervisors per category of municipalities (according to population) in 2014**

This table shows that the 253 municipal supervisors - who dedicated a total of 63.05 FTEs to environmental enforcement duties - together performed 4,462 environmental enforcement inspections in 2014. This is an average number of environmental enforcement inspections of 18 per supervisor and an average number of environmental enforcement inspections of almost 71 per FTE. This means that if each supervisor were able to focus full-time on environmental enforcement duties, a total of 17,963 environmental enforcement inspections would be carried out by the 253 appointed municipal supervisors. Due to the fact that the supervisors can dedicate on average less than one-fourth of their time to enforcement duties, only 4,462 inspections were carried out in total. These data would again make it possible to argue in favour of adjusting the Environmental Enforcement Act and Environmental Enforcement Decree in the sense that the number of FTEs to be dedicated to enforcement duties is defined, instead of the number of supervisors per municipality.

When looking at the number of performed environmental enforcement inspections, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE, a varied picture can be observed per category of municipalities. In all the categories the average number of environmental enforcement inspections per FTE is always higher than

the average number of inspections per supervisor. This is owing to the fact that the appointed supervisors dedicated only a limited amount of their time to environmental enforcement duties within the framework of the Environmental Enforcement Act.

For 2014, the municipalities were asked to give the number of environmental enforcement inspections that were carried out following complaints and reports and the number of environmental enforcement inspections that were carried out at own initiative, for instance on the basis of an environmental enforcement programme. This is reflected in table 22.

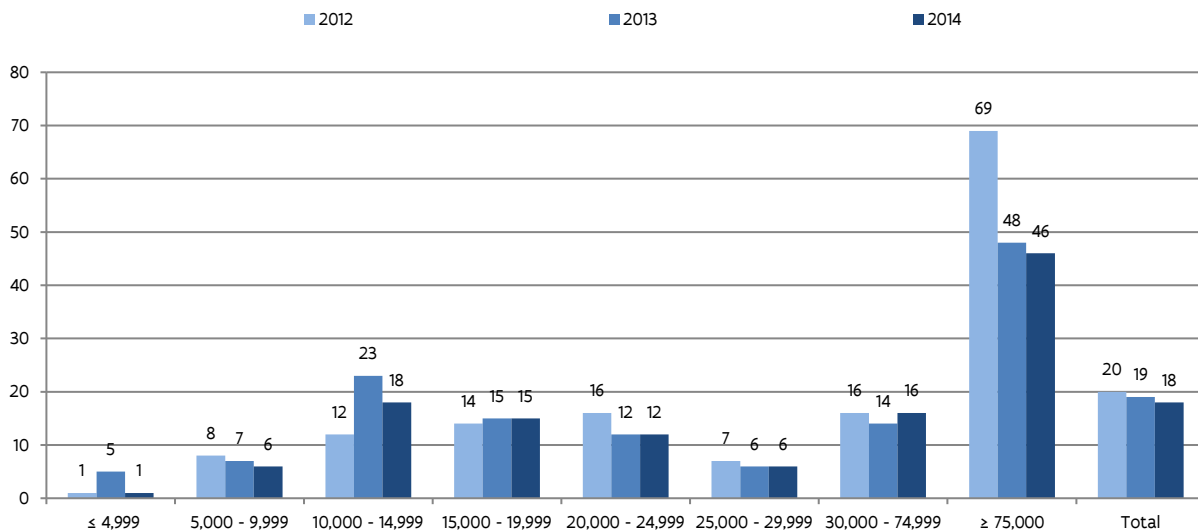
## ENVIRONMENTAL ENFORCEMENT INSPECTIONS

	Total number of environmental enforcement inspections carried out	Number of environmental enforcement inspections carried out at own initiative	Number of environmental enforcement inspections following complaints and reports
≤ 4,999	1	1	0
5,000 - 9,999	206	31	175
10,000 - 14,999	1,102	228	874
15,000 - 19,999	547	217	330
20,000 - 24,999	323	131	192
25,000 - 29,999	81	22	59
30,000 - 74,999	766	165	601
≥ 75,000	1,436	584	852
Total	4,462	1,379	3,083
2013	4,657	1,615	3,042

**Table 22: Number of environmental enforcement inspections carried out by municipal supervisors within the framework of the Environmental Enforcement Act - following complaints and reports and at own initiative in 2014**

In 2014, a total of 4,462 environmental enforcement inspections were carried out by the municipal supervisors. 69% of these inspections were implemented following complaints and reports and 31% were proactive inspections carried out at own initiative, possibly within the framework of planned actions or an environmental enforcement programme. The ratio of the number of inspections undertaken in response to complaints and reports to the inspections undertaken proactively in 2013 and 2012 were, on each occasion, 65% to 35%.

The graphs below provide an overview of the average number of environmental enforcement inspections per municipal supervisor and the average number of inspections per FTE in 2012, 2013 and 2014. Just like with the regional supervisors and the local police supervisors, the total number of FTEs refers to the number of FTEs that were dedicated by the supervisor to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties. In this the different time-related aspects of supervisory duties are taken into account.

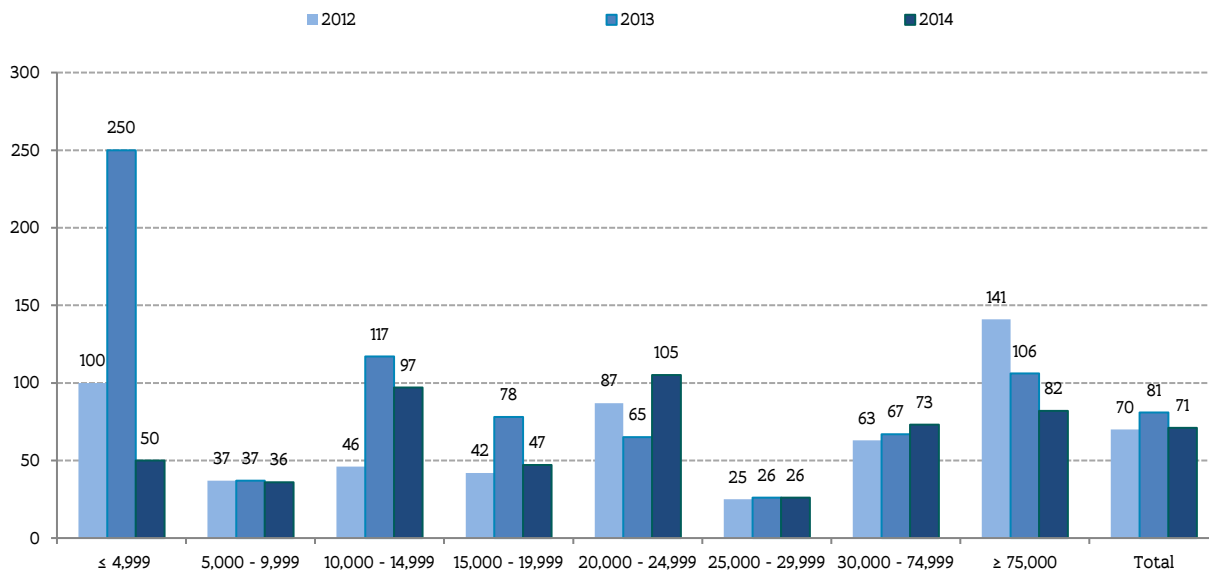


**Graph 8 Average number of inspections per municipal supervisor**

The above data show that the average number of environmental enforcement inspections per municipal supervisor amounted to 18 inspections in 2014. This is a decrease by almost 2 inspections compared to 2012 when the ratio was still 20 environmental enforcement inspections per municipal supervisor.

The decrease in the average number of environmental enforcement inspections per municipal supervisor is remarkable, given the increase in the number of municipal supervisors - from 238 in 2012 to 247 in 2013 and 253 in 2014 - and can mainly be explained by a decrease in the number of performed environmental enforcement inspections - 4,748 in 2012, to 4,657 in 2013 and 4,462 in 2014 - by these municipal supervisors.

However, it is more precise to make a comparison between the average number of performed environmental enforcement inspections per FTE in the municipalities in 2012, 2013 and 2014, since the number of FTEs shows how much time was actually dedicated to environmental enforcement duties by the appointed municipal supervisors. The average number of environmental enforcement inspections per FTE in 2012, 2013 and 2014 is reflected in graph 9.



**Graph 9: Average number of environmental enforcement inspections per FTE**

The diagram above shows a fluctuating character for the average number of environmental enforcement inspections per FTE in recent years. Taking into consideration that the total number of environmental enforcement inspections undertaken dropped in 2014 compared to 2013 and in 2013 compared to 2012, but the total number of appointed municipal supervisors increased considerably in those years, the fluctuating character of the total average number of environmental enforcement inspections per FTE can be explained by the varying time dedicated to environmental enforcement duties. After all, in 2012 this was a total of 67.95 FTE, in 2013 this decreased to 57 FTEs and in 2014 it again rose to 63.05 FTE.

### 2.3.6 Intermunicipal associations

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

Since the Environmental Enforcement Act has become effective in 2009, the intermunicipal associations have become increasingly important in the environmental enforcement landscape. Organising the monitoring of compliance with environmental law via an intermunicipal association indeed has a number of advantages. For instance, it may be interesting for smaller municipalities to organise themselves this way.

The appointment of an intermunicipal supervisor could lead to a scale increase in terms of the expertise and geographical availability of the supervisor. As the position of supervisor is currently not required to be full-time equivalent, and in smaller municipalities it is often combined with other duties, the appointment of a full-time equivalent within an intermunicipal association can only increase the expertise of this supervisor.

In addition, it may be opportune that several supervisors are appointed within an intermunicipal association so that supervisors no longer have to perform inspections within their own municipality.

Therefore, the Flemish High Enforcement Council for Spatial Planning and Environment considers it important to map out the activities of these intermunicipal associations and for that reason has questioned those intermunicipal associations that are known to have organised themselves or are in the process of organising themselves around environmental enforcement.

For the present environmental enforcement report, the Flemish High Enforcement Council for Spatial Planning and Environment has received a completed VHRM questionnaire from five intermunicipal associations

A first intermunicipal association, which acts as an umbrella for 18 municipalities, indicated that it had two supervisors at its disposal, as stated in article 16.3.1§1 of the Environment Enforcement Act. It was stated that in total 1.4 FTEs were dedicated to environmental

enforcement duties by these intermunicipal supervisors. In addition 0.2 FTE was dedicated in 2014 to administrative support of environmental enforcement duties by non-supervisors in this intermunicipal association. 75 environmental enforcement inspections were performed in response to complaints and reports. No breach was identified in 8 inspections. In 1 inspection, no action was taken in response to the identified breach. On four occasions, an advice was drawn up and on 18 occasions an exhortation was issued. 15 priority reports were drawn up. In addition it was stated that during 18 inspections an exhortation or an official report was drawn up in response to several inspections. During three inspections, an environmental offence was identified for which the intermunicipal supervisor was not competent and whereby the file was submitted to the competent bodies. During six sound inspections, neither an environmental offence nor an environmental breach could be identified. In addition, the results of two inspections performed in 2014 are not yet known, since the file is still open.

In a second intermunicipal association, to which 11 municipalities belong, 0.1 FTE was dedicated to environmental enforcement duties by the intermunicipal supervisor. In 2014, 23 environmental enforcement inspections were performed in response to complaints and reports and there were 6 proactive inspections. During 5 of these inspections, no breach was identified. 8 recommendations, 16 exhortations and 4 non-priority reports were made. In addition, during 1 inspection, an administrative measure, more specifically an order to regularisation, was imposed.

A third intermunicipal association, working as an umbrella organisation for 20 municipalities, indicated that it had a supervisor at its disposal as stated in article 16.3.1§1 of the Environment Enforcement Act. In 2014, less than 1 FTE was dedicated to environmental enforcement duties by the intermunicipal supervisor and less than 1 FTE was dedicated to administrative support by non-supervisors. 37 environmental enforcement inspections were performed in response to complaints and reports. No breach was identified during 18 of these inspections. During 1 inspection, no action was undertaken against the identified breaches. A recommendation was made 10 times. For 5 environmental enforcement inspections, an exhortation was made. The intermunicipal supervisor also had one administrative measure imposed in 2014. In addition, ten non-priority official reports were drawn up concerning identified environmental offences.

A last intermunicipal association, to which 54 municipalities are affiliated, stated that no intermunicipal supervisor was appointed in 2014, as intended in article 16.3.1§1 of the Environment Enforcement Act. There were therefore no environmental enforcement inspections performed by this intermunicipal association. There was, however, a total of 0.2 FTE spent on environment enforcement tasks pursuant to the Environment Enforcement Act and 0.05 FTE on administrative support.

### 3 EVALUATION OF THE USE OF THE INDIVIDUAL ENVIRONMENTAL ENFORCEMENT INSTRUMENTS AND SAFETY MEASURES

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

The idea is to obtain insight into the use of all the resources that were made available to enforcement actors to reach their objectives. Particular attention will be paid to whether certain instruments are used less often.

This report offers a picture of the total number of inspections compared to the number of inspections where a breach was identified. This allows statements to be made about the level of compliance and the targeted enforcement by the actors. In addition, the enforcement instruments are assessed in this report compared to the number of enforcement inspections performed where a breach was identified. An assessment was made with regard to the number of inspections where a breach was identified because most instruments that were evaluated can be deployed when identifying a breach.

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

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

### 3.1 INSPECTIONS DURING WHICH A BREACH WAS IDENTIFIED

In order to make an accurate evaluation of the environmental enforcement instruments, the right parameters should be compared with each other. In table 23 the total number of performed inspections is broken down into the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified'. Since an instrument can only be used to establish an environmental offence or environmental infringement, the number of times it was applied will be compared to the number of 'inspections during which a breach was identified'. One exception to this is the instrument 'recommendation'. The reason for this is that the recommendation can only be applied when there is a risk of an environmental offence or environmental infringement, but no breach was identified yet.

Table 23 gives an overview for each enforcement actor of the total number of environmental enforcement inspections performed, the number of inspections where no breach was identified and the number of inspections where a breach was identified in 2014.

To place the data above in perspective or to interpret them, the following remarks should be taken into consideration:

- The Operational Water Management Division of the Flemish Environment Agency (VMM) indicated that it combines environmental enforcement inspections with its supervisory and testing activities along the unnavigable watercourses.

#### INSPECTIONS

ENFORCEMENT ACTOR	Number of inspections	Number of inspections during which no breach was identified	% share 2014	Number of inspection during which a breach was identified	% share 2014
ALBON	272	241	89%	31	11%
AMI	11,964	11,489	96%	475	4%
AMV	949	648	68%	177	19%
ANB	9,087	7,568	83%	1,519	17%
AWZ	/	0	/	/	/
AWV	201	0	0%	201	100%
VAZG					
NV De Scheepvaart (Shipping Agency)	/	/	/	/	/
OVAM	402	101	25%	301	75%
VLM	4,658	3,680	79%	978	21%
VMM – Division Operational Water Management	/	0	/	/	/
VMM – Division Water Reporting	25	0	0%	25	100%
MOW – Division Maritime Access	0	0	0%	0	0%
Provincial supervisors	1	0	0%	1	100%
Municipal supervisors	4,462	1,546	35%	2,916	65%
Local police supervisors	4,900	1,619	33%	3,281	67%
<b>Total</b>	<b>36,921</b>	<b>26,892</b>	<b>73%</b>	<b>9,905</b>	<b>27%</b>

Table 23: Comparison between the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified' for 2014



The 20 area administrators of the VMM - OWM department provide permanent supervision along the waterways. This supervision acts, in the first place, to discourage potential offenders. Where necessary, the administrators work actively to raise awareness and to offer guidance in order to prevent or eliminate environmental breaches. Should the soft approach have no effect or for offences with clear environmental damage, the area administrators inform the supervisors of the Operational Water Management Division in order to issue a citation for the offence. Taking into account that the inspection takes place permanently in combination with the supervisory and testing duties, no answer can be given to the question regarding the number of breaches that were identified.

- ▶ The Flemish Land Agency (VLM) stated that, for the 4,658 inspections whereby an admissible report (both inspection reports and official reports) was drawn up, no breach was identified during 3,680 admissible inspections. It was also stated that the reports in the context of the samples were not included in these figures and that, for the inspections, the imposition of sanctions falls under both the Environment Enforcement Act and the Manure Decree.
- ▶ The Shipping Agency stated that it had not performed targeted environmental enforcement inspections in 2014. The reports drawn up in 2014 concerned in all cases breaches that were identified during the performance of the normal daily duties of the supervisors.
- ▶ The Environmental Inspectorate Division (AMI) wishes to place a caveat to the above figure that was stated by the division concerning the number of inspections where a breach was identified. It appears that for the Environmental Inspectorate Division several inspections can take place relating to one breach, inspections for an effective identification of the breach and inspections after the breach has been identified. The former inspections are inspections in which various conclusions were drawn that ultimately resulted in the decision that a breach had occurred. The latter inspections were called progress inspections by the Environmental Inspectorate Division. Their aim is

to monitor the remedying or return to conformity. To avoid double counting of the breaches, the department has in its reporting coupled a breach to one and only one inspection and not to the previous inspections or the progress inspections that are also connected to it. Since, however, there are also previous inspections and progress inspections, there is a one-on-many relationship (one breach for several inspections). On the other hand, several breaches can be identified during one inspection (or a group of inspections). As part of its programme and risk-based approach, AMI does, after all, perform extensive inspections in which the compliance with numerous environmental provisions are evaluated. This too causes a deviation from the one-on-one relationship

- ▶ Waterwegen en Zeeknaal (the Waterways and Sea Canal Agency) (AWZ) indicated that the inspections carried out are part of the daily duties of the supervisor in the context of supervision on property/territory of the agency. Therefore it was difficult to state how many inspections were actually performed.
- ▶ The Public Waste Agency of Flanders (OVAM) stated that it performed 402 inspections in 2014. In addition, support was given to the performance of 610 inspections by other environmental enforcement actors.

During 26,892 of the total of 36,921 environmental enforcement inspections that were carried out no breach was identified, which comes down to 73%, whereas during 9,905 inspections or 27% a breach was identified. In 2013 and 2012, this ratio amounted respectively to 63% and 37%, in 2011 68% compared to 32%, and in 2010 to 67% compared to 33%. In 2014, a difference can be observed in this balance compared to a previously constant balance in the years before. This means that the fact that a breach was identified during around 1/3 of the environmental enforcement inspections has changed to one breach during just a little more than 1/4 of the environmental enforcement inspections. This increased percentage of inspections whereby no breach is identified could possibly be due to an increased level of compliance or a lack of risk-driven approach and targeted supervision.

When looking at the different enforcement actors separately, we get a different picture of the ratio of the number of inspections during which a breach was identified or not, similar to previous years. The percentage of the number of inspections during which a breach was identified vis-à-vis the total number of performed environmental enforcement inspections is very high among municipal and local police supervisors, namely more than 65% of the inspections, even though this is a decline compared to previous years. This high percentage can probably be explained by the fact that with local supervisors the number of inspections following complaints and reports is higher than the number of inspections at own initiative. It can indeed be expected that more breaches will actually be identified during inspections that are carried out following complaints and reports.

For the other actors there are large individual differences. The AWV identified a breach during every environmental enforcement inspection performed. The OVAM also shows a very high percentage of the number of inspections where a breach was identified, namely a breach could actually be identified during  $\frac{3}{4}$  of the environmental enforcement inspections performed. For the other regional enforcement inspections, however, the ratio is much lower. At the AMI, for example, a breach was identified during 4% of the environmental enforcement inspections performed, and at the ALBON 11%. In order to better place these percentages in perspective, reference can be made to the caveats of the various actors, including the caveat of the AMI, just below table 26.

## 3.2 INSPECTIONS WITHOUT FURTHER ACTION

In the survey the environmental enforcement actors were asked about the number of inspections carried out during which breaches – either environmental infringements or environmental offences – of the applicable environmental law were identified, but for which no action was taken. In table 24 the number of 'inspections without further action' is compared to the total number of 'inspections during which a breach was identified' by the enforcement actor in 2014. In addition, the percentage share of these 'inspections without further action' in 2012 and 2013 is given.

To place the data above in perspective or to interpret them, the following remarks should be taken into consideration:

- ▶ The Environmental Licences Division (AMV) states that for the 15 inspections where no action was taken based on the breaches identified insufficient information or evidence was available.
- ▶ The Flemish Environmental Agency (VMM) - Operational Water Management Division (AOW) stated that only when after extensive study on site no offender could be identified (e.g. illegal dumping, water pollution with unknown origins), could the identification not be followed by an action. If there are repeated identifications at the same location, the surroundings will be made aware of the fact by a letter to the neighbours/owners of adjoining land.

### INSPECTIONS WITHOUT FURTHER ACTION

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of inspections without further action	% share 2014	% share 2013	% share 2012
ALBON	31	0	0%	0%	0%
AMI	475	0	0%	0%	0%
AMV	177	15	8%	0%	5%
ANB	1,519	0	0%	0%	0%
AWZ	/	/	/	/	/
AWV	201	0	0%	0%	/
VAZG	/	/	/	72%	92%
NV De Scheepvaart (Shipping Agency)	/	0	/	/	/
OVAM	301	0	0%	0	0%
VLM	978	0	0%	0	0%
VMM – Division Operational Water Management	/	/	/	0%	/
VMM – Division Water Reporting	25	0	0%		/
MOW – Division Maritime Access	0	0	0%	0%	/
Provincial supervisors	1	0	0%	71%	/
Municipal supervisors	2,916	142	5%	3%	2%
Local police supervisors	3,281	752	23%	3%	0,62%
<b>Total</b>	<b>9,905</b>	<b>909</b>	<b>9%</b>	<b>15%</b>	<b>22%</b>

Table 24: Number of 'inspections without further action' compared to the total number of 'inspections during which a breach was identified' in 2012, 2013 and 2014

Table 24 shows that for more than 9% of the total of 9,905 inspections where a breach was identified, no further action was undertaken with regard to the breach identified. This is a considerable drop compared to the data of the Environmental enforcement report 2012 and 2013, where 22% and 15% respectively of the inspections where a breach was identified resulted in no action being taken with regards to the breach identified.

In addition, the table shows that only at the Environmental Licences Division, the municipal supervisors and for the supervisors of the local police - VMM-AOW not taken into consideration - there were inspections without any further action. As already indicated, the AMV only refrained from taking action in those cases where there was insufficient information and evidence. If sufficient details were available, the necessary action was always taken.

A possible explanation for such inspections without further action could be that the breaches identified were environmental breaches, and that the Environment Enforcement Act gives the supervisors in that case the liberty as to whether or not to draw up a report. In addition it is possible that the suspected offender was unknown and the supervisor had decided that the chance of the offender being identified was very small to non-existent.

### 3.3 INSPECTIONS WITH UNKNOWN RESULTS

Through the survey among the environmental enforcement actors it was examined how many inspections had unknown results. This was done by calculating the difference between on the one hand the total number of inspections performed and on the other the number of inspections whereby no breach was identified, the number of inspections whereby no action was undertaken towards the identified breach, the number of recommendations, the number of demands, the number of reports of findings and the number of official reports. This is thus always a minimum number, since several instruments can be used during an inspection. In table 25 the number of 'inspections with unknown results' is compared to the total number of environmental enforcement inspections carried out by the enforcement actor. Additionally, the percentage share of these 'inspections with unknown results' is shown for 2012 and 2013.

To place the data above in perspective or to interpret them, the following remark should be taken into consideration:

- ▶ The Environmental Licences Division (AMV) stated that in 2014, the result of 8 inspections meant a suspension or a termination of the accreditation. In addition, a 'plan of action' was drawn up during 82 inspections. This means that after an audit the laboratory gives, at the request of the competent department, the necessary follow-up to the audit report and when that proves necessary, submits an action plan with corrective measures and periods for performance to the competent authority and the reference laboratory of the Flemish Region (VLAREL). Furthermore, the Environmental Licences Division stated that, in response to 124 inspections, the result was still unknown since they were "still being studied".

#### INSPECTIONS WITH UNKNOWN RESULTS

ENFORCEMENT ACTOR	Total number of inspections	Number of inspections with unknown results	% share 2014	% share 2013	% share 2012
ALBON	272	0	0%	0%	0%
AMI	11,964	0	0%	0%	0%
AMV	949	107	11%	23%	45%
ANB	9,087	0	0%	0%	0%
AWZ	/	/	/	0%	/
AWV	201	91	45%	62%	/
VAZG				0%	0%
NV De Scheepvaart (Shipping Agency)	/	/	/	/	/
OVAM	402	0	0%	23%	0%
VLM	4,658	468	10%	16%	14%
VMM – Division Operational Water Management	/	/	/	87%	/
VMM – Division Water Reporting	25	24	96%		91%
MOW – Division Maritime Access	0	0	0%	0%	/
Provincial supervisors	1	0	0%	0%	0%
Municipal supervisors	4,462	54	1%	16%	30%
Local police supervisors	4,900	1,044	21%	58%	40%
Total	36,921	1,788	5%	12%	9%

Table 25: Number of inspections with unknown results

Table 25 shows that for 5 environmental enforcement actors the result of part of the inspections is unknown, namely for the Environmental Licences Division (AMV), the Agency for Roads and Traffic (AWV), the Flemish Land Agency (VLM), the Flemish Environment Agency (VMM), the municipal supervisors and the local police supervisors. This means that in 5% of the 36,921 environmental enforcement inspections performed in 2014, the result was unknown. This is a decline in comparison with 2013 and 2012, when this percentage was 11.5% and 9% respectively.

At the Flanders Environment Agency (VMM) - Water Reporting Division it can be concluded that, for no less than 24 of the total of 25 inspections performed in 2014, the result is unknown. This also means that the results of more than 96% of the inspections performed are unknown. It can be deduced from the table that in comparison to 2012 and 2013 a decrease can be observed in the percentage share of inspections with unknown results among municipal and local police supervisors in 2014. This may point to an improved monitoring. Good monitoring is indeed crucial for efficiently drawing up the environmental enforcement report. Complete and accurate information is to be used as much as possible, since each inspection with unknown results means that only an incomplete evaluation can be made for the relevant actors and the whole set of instruments.

### 3.4 EVALUATION OF THE INSTRUMENT 'RECOMMENDATION'

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

Since the 'recommendation' is a preventative instrument and can therefore only be used if no offence was identified, the number of recommendations is compared to the number of inspections during which no breach was identified. When interpreting the data below, however, account should be taken of the fact that during an inspection a breach can be identified and that,

apart from the application of an exhortation, an identification report or an official report, a recommendation is also formulated during that same inspection with regard to any possible future breaches. An overestimation in terms of percentage of the number of formulated recommendations with regard to the number of inspections during which no breach was identified can therefore not be excluded.

Table 26 gives an overview of the application of the instrument 'recommendation' by the different supervisory actors. Additionally, the percentage share of the use of this instrument in 2012 and 2013 is also given.

#### RECOMMENDATIONS

ENFORCEMENT ACTOR	Number of inspections during which no breach was identified	Number of recommendations by supervisors	% share 2014	% share 2013	% share 2012
ALBON	241	9	4%	16%	9%
AMI	11,489	139	1%	1%	1%
AMV	648	25	4%	3%	3%
ANB	7,568	0	0%	0%	0%
AWZ	0	/	/	0%	/
AWV	0	/	0%	0%	/
VAZG	/	/	/	66%	33%
NV De Scheepvaart (Shipping Agency)	/	4	/	0%	/
OVAM	101	82	81%	0%	18%
VLM	3,680	42	1%	0%	0%
VMM – Division Operational Water Management	0	0	/	0%	/
VMM – Division Water Reporting	0	0	0%		91%
MOW – Division Maritime Access	0	0	0%	0%	/
Provincial supervisors	0	0	0%	0%	0%
Municipal supervisors	1,546	1,297	84%	124%	256%
Local police supervisors	1,619	297	18%	126%	271%
<b>Total</b>	<b>26,892</b>	<b>1,895</b>	<b>7%</b>	<b>12%</b>	<b>13%</b>

Table 26: Number of 'recommendations' made by supervisors compared to the total number of 'inspections during which no breach was identified'

To place the data above in perspective or to interpret them, the following remarks should be taken into consideration:

- ▶ The Flemish Land Agency (VLM) made 42 recommendations in 2014, but the wording of the recommendations has still not been registered. This means that the number of recommendations is potentially higher.

- ▶ The Environmental Inspectorate Division (AMV) suggests that the figure for the number of inspections where no breach was identified may be an overestimation for the division. The previous inspections and the progress inspections are, after all, included in that number, while the inspections are linked to a breach.

It can be deduced from the above table that 2,922 recommendations were formulated on a total of 23,136 inspections during which no breach was identified. This means 7%. In 2013, this percentage was 11.5% (in total 2,789 exhortations) and in 2012 12.5% (in total 2,922 exhortations). In recent years, both a decline in the percentage of recommendations among the total number of inspections where no breach was identified and a decline in the absolute number of recommendations made can be observed. This percentage decline in the use of the instrument compared to the number of inspections where a breach was identified, can be seen for every enforcement actor, except at the OVAM (sharp rise), AMV (slight rise) and AMI (stable).

Still, the data in the above table clearly show a distinction between the regional supervisory bodies on the one hand and the municipal supervisors and local police supervisors on the other hand. Regional supervisory bodies use the instrument 'recommendation' to a far lesser extent than municipal and local police supervisors. An exception to this is the OVAM: in 2014 it made a preventive and awareness-raising recommendation in 81% of the total inspections where no breach was identified.



### 3.5 EVALUATION OF THE INSTRUMENT 'EXHORTATION'

For the instrument 'exhortation' a clear definition can be found in DABM as well. Article 16.3.27 of DABM states: 'When supervisors, during the performance of their supervisory duties, identify an environmental infringement or an environmental offence, they may exhort the suspected offender and any other parties involved to take the necessary measures to end this environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition'. The supervisor can consequently choose whether or not to apply the instrument of exhortation.

Table 27 shows the figures relating to the use of the instrument 'exhortation' compared to the total number of inspections during which a breach was identified in 2014. These figures were given by the different

environmental enforcement actors. This percentage ratio is also given for 2012 and 2013 for purposes of comparison.

Table 27 indicates that in 2014, as well as in the previous years, the instrument 'exhortation' was frequently used. An exhortation was made in nearly half of all inspections where a breach was identified. After all, a total of 4,635 exhortations were made in 2014 during 9,905 inspections where a breach was identified. This is on average a percentage share of 47%. In 2012 and 2013, this percentage was 31% and 30% respectively. This points to an increase in the percentage of exhortations in the total number of inspections where a breach was identified.

#### EXHORTATIONS

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of exhortation by supervisors	% share 2014	% share 2013	% share 2012
ALBON	31	34	110%	100%	100%
AMI	475	1,612	339%	161%	154%
AMV	177	57	32%	17%	55%
ANB	1,519	866	57%	60%	48%
AWZ	/	/	/	0%	/
AWV	201	0	0%	0%	/
VAZG	/	/	/	5%	6%
Shipping Agency	/	22	/	/	
OVAM	301	175	58%	37%	98%
VLM	978	261	27%	20%	18%
VMM – Division Operational Water Management	/	10	/	7%	0%
VMM – Division Water Reporting	25	0	0%		91%
MOW – Division Maritime Access	0	0	0%	0%	/
Provincial supervisors	1	0	0%	0%	0%
Municipal supervisors	2,916	1,145	39%	36%	22%
Local police supervisors	3,281	453	14%	11%	22%
<b>Total</b>	<b>9,905</b>	<b>4,635</b>	<b>47%</b>	<b>30%</b>	<b>31%</b>

Table 27: Number of 'exhortations' formulated by supervisors compared to the total number of 'inspections during which a breach was identified'

To place the data above in perspective, the following should be taken into account:

- ▶ The AMI adds the same caveat to the number of exhortations that it reports as the one concerning the number of inspections where a breach was identified as indicated at 3.1 Inspections where a breach was identified.

All enforcement actors, except the provincial supervisors and the supervisors of the VMM - Water Reporting Division, used the exhortation instrument in inspections where a breach was identified. The degree to which the instrument was used differs, however, from actor to actor. It can, for example, be deduced that the ALBON made at least one exhortation for each inspection where a breach was identified. The foregoing 110% shows, after all, that there doesn't need not be a one-on-one relationship, since several exhortations can be made during an inspection where a breach is identified. This is also true for AMI, with a percentage of 339%. AMI makes several exhortations per inspection, exhortations are also made during progress inspections in order to engineer a return to conformity with the standard. One should thus talk of several exhortations per file rather than several exhortations per inspection. The increase in the number of exhortations at AMI is a consequence of a more targeted approach in 2014.

### 3.6 EVALUATION OF THE INSTRUMENT 'IDENTIFICATION REPORT'

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

Table 28 reflects the number of identification reports drawn up by individual enforcement actors compared to the number of inspections during which a breach was identified. This percentage is also given for 2012 and 2013 for comparison.

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

In comparison with the other instruments, it can generally be concluded that the instrument 'identification report' is not often used. In total, 59 identification reports were drawn up. This is a decline compared to the 77 identification reports that were drawn up in 2012 by the supervisory bodies and the 110 identification reports that were drawn up in 2013. The percentage of the total number of inspections where a

breach was identified in which this instrument was used does not, however, differ much from previous years. In 2012, this figure was, rounded off, 0.6% and in 2013, 0.8%.

Table 28 also indicates that not all enforcement actors make use of the identification report. It is the Environmental Inspectorate Division that makes the most use of this instrument.

As indicated earlier, the low number of identification reports does not imply that the number of environmental infringements that were identified in 2014 has decreased. Supervisors can in fact decide for themselves whether or not to draw up an identification report for the identified environmental infringement.

In advance of the figures in the next chapter, a discrepancy can be found for 2014 as well - just like in the previous reports - in the number of identification reports that were drawn up and communicated by supervisory bodies and the number of reports that were actually referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy. The above table indicates that ANB and OVAM drew up respectively 17, 15 and 6 identification reports in 2014. The AMMC communicated actually having received 19, 14 and 6 identification reports from these supervisory bodies. The municipal supervisors reported having drawn up 14 identification reports, but the AMMC reported having received only 3 identification reports from the municipal supervisors.

## IDENTIFICATION REPORT

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of identification reports by supervisors	% share 2014	% share 2013	% share 2012
ALBON	31	0	0%	0%	0%
AMI	475	17	4%	1.15%	0.35%
AMV	177	0	0%	0%	0%
ANB	1,519	15	1%	0.07%	0.36%
AWZ	/	/	/	0%	/
AWV	201	0	0%	0%	/
VAZG	/	/	/	0%	0%
NV De Scheepvaart (Shipping Agency)	/	0	/	-	/
OVAM	301	5	2%	19.87%	10.86%
VLM	978	0	0%	0%	0%
VMM – Division Operational Water Management	/	0	/	0%	0%
VMM – Division Water Reporting	25	0	0%		
MOW – Division Maritime Access	0	0	0%	/	/
Provincial supervisors	1	0	0%	0%	0%
Municipal supervisors	2,916	14	0.48%	0.38%	0.39%
Local police supervisors	3,281	7	0.21%	0.14%	0%
<b>Total</b>	<b>9,905</b>	<b>58</b>	<b>1%</b>	<b>0.77%</b>	<b>0.58%</b>

Table 28: Number of 'identification reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'

### 3.7 EVALUATION OF THE INSTRUMENT 'OFFICIAL REPORT'

While environmental infringements can be identified via an identification report, supervisors have to use official reports to report environmental offences to the public prosecutor's office. Table 29 provides an overview of the initial official reports drawn up per enforcement actor with respect to the number of inspections during which a breach was identified. This percentage is again given, for comparison, for 2012 and 2013.

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

inspections during which a breach was identified may refer to either environmental offences or environmental infringements.

To place the data above in perspective or to interpret them, the following remark should be taken into consideration:

- The Flemish Land Agency (VLM) stated that 197 official reports were drawn up in 2014: 178 under the Environment Enforcement Act and 19 under the Manure Decree. All official reports drawn up pursuant to the Manure decree are priority. In addition, 10 official reports of information - non-priority official reports - were drawn up in 2014.

#### OFFICIAL REPORT

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of official reports	% share 2014	% share 2012	% share 2013
ALBON	31	0	0	0%	1%
AMI	475	475	100%	53%	57%
AMV	177	7	4%	0%	0%
ANB	1,519	653	43%	52%	54%
AWZ	/	1	/	/	/
AWV	201	110	55%	/	19%
VAZG	/	/	/	0%	2%
NV De Scheepvaart (Shipping Agency)	/	23	/	/	/
OVAM	301	63	21%	10%	10%
VLM	978	207	21%	19%	28%
VMM – Division Operational Water Management	/	1	/	5%	10%
VMM – Division Water Reporting	25	1	4%		
MOW – Division Maritime Access	0	0	0%	/	/
Provincial supervisors	1	2	200%	200%	76%
Municipal supervisors	2,916	265	9%	9%	9%
Local police supervisors	3,281	988	30%	20%	22%
Total	9,905	2,796	28%	17%	17%

Table 29: Number of 'official reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'

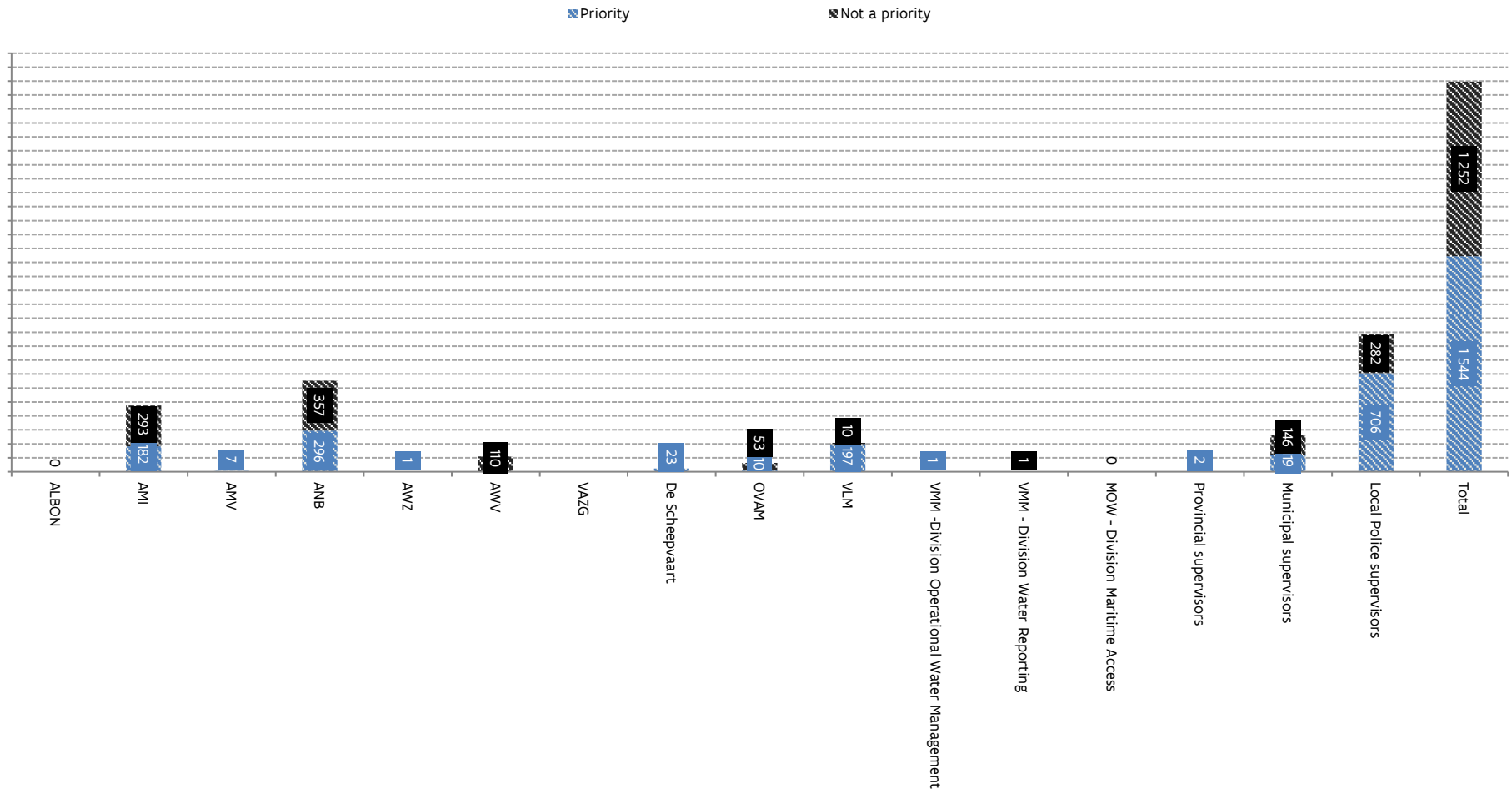
In 2014, an official report was drawn up for 2,796 of the total of 9,905 inspections during which a breach was identified. This is a percentage of 28%. In comparison with 2013 and 2012, an increase in the number of inspections whereby an official report was drawn up can be seen, both in absolute numbers and in percentages with regard to the number of inspections where a breach was identified. In 2012, the number of official reports was 2,254 in a total of 13,313 inspections where a breach was identified, which implies a percentage of 17%. In 2013, 14,319 inspections were performed and 2,418 official reports were drawn up, which again represents 17%. It can be noted that the number of inspections where a breach is identified has decreased in 2014, but that the use of the instrument of the official report has risen. This means that an increasing number of breaches were cited in 2014 with an official report, namely during more than ¼ of all inspections where a breach was identified.

The data from table 29 show, however, an increasingly pragmatic approach to article 29 of the Code of Criminal Procedure that states that when identifying an offence, an official report should be drawn up and that this official report should be submitted to the Public Prosecutor. Taking into account the limitations of the figures and the fact that the breaches identified could also be environmental breaches, it can be stated that the majority of the enforcement actors also use instruments other than the official report to achieve the intended purpose, without always initiating a penal process for this. The fact that, for most enforcement actors, there is not a one-on-one relationship between the number of inspections whereby a breach was identified and the number of official reports drawn up points to this.

In March 2013, the procedural guidelines 'Priority Memorandum Prosecution Policy for Environmental law in the Flemish Region' were signed by the Minister of the Environment and the Minister of Justice. These procedural guidelines set priorities for the purposes of supervision and prosecution so that both were in line with each other. These guidelines also stated that official reports drawn up for environmental offences stated in the priority memorandum were considered 'priority official reports'. The VHRM has, in the questionnaire for this Environmental enforcement

report 2014 also asked for a breakdown between the number of priority and non-priority official reports. The following graph shows this relationship.

Graph 10 shows a ratio, with regard to the total number of official reports drawn up in 2014, of 55% priority official reports against 45% non-priority official reports. In 2013, this ratio was the same. A distinction can, however, be seen between the various enforcement actors. Certain actors draw up (almost) exclusively priority official reports, such as the VLM, The Shipping Agency and the AMV. Other actors draw up primarily non-priority official reports, for example the OVAM and the AWW, or draw up both priority and non-priority official reports.



Graph 10: Ratio between priority and non-priority official reports in 2014

## 3.8 EVALUATION OF THE INSTRUMENT 'ADMINISTRATIVE MEASURE' AND 'APPEALS AGAINST DECISIONS TO IMPOSE ADMINISTRATIVE MEASURES'

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

Articles 16.4.5 through 16.4.18 of Title XVI of DABM lay down the rules for the imposition, the repeal, the implementation, the appeal against and the petition for the imposition of administrative measures, as well as the possibility for imposing an administrative penalty payment in the event of an administrative measure not being implemented or not being implemented on time. Appeals against decisions to impose administrative measures will be discussed in greater detail in Chapter 3.8.2.

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

- ▶ an order to the suspected offender to take measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition (regularisation order);
- ▶ an order to the suspected offender to end activities, works, or the use of objects (prohibition order);
- ▶ 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 (administrative coercion);
- ▶ a combination of the measures mentioned in 1°, 2° and 3°.

The supervisor, the mayor and the provincial governor consequently have the choice of whether or not to apply the administrative measure in a specific situation. The regularisation order has the same finality as the exhortation, supervisors can choose which instrument is most appropriate. When choosing the instrument, the proportionality principle must, in compliance with art.16.4.4 of the EEA, be respected.

Table 30 gives an overview of the total number of imposed administrative measures in relation to the number of inspections during which a breach was identified per enforcement actor in 2014. This percentage is again given, for comparison, for 2012 and 2013.

In 2014, a total of 447 administrative measures were imposed by the supervisors. This is a decline compared to the 626 administrative measures imposed in 2013 and the 624 administrative measures imposed in 2012. Percentage-wise, compared to the number of inspections where a breach is identified, the number of administrative measures imposed remains more or less the same. In 2012, this percentage was 4.68%, in 2013 4.37% and in 2014 4.51%. This is because not only the number of administrative measures imposed in 2014 declined, but also the number of inspections whereby a breach was identified.

Table 30 indicates that not all enforcement actors make use of the instrument of the administrative measure. The majority of the administrative measures imposed were imposed by the municipal supervisors, namely 39%, following by the ANB that imposed 32% of the administrative measures imposed in 2014.

Table 31 gives an overview of the share of the different types of administrative measures in relation to the total number of administrative measures imposed per enforcement actor in 2014.

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



## ADMINISTRATIVE MEASURE

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of administrative measures by supervisors	% share 2014	% share 2013	% share 2012
ALBON	31	0	0%	0%	0%
AMI	475	20	4%	2%	3%
AMV	177	0	0%	0%	0%
ANB	1,519	144	9%	12%	14%
AWZ	/	/	/	0%	/
AWV	201	0	0%	0%	/
VAZG	/	/	/	0%	0%
Shipping Agency	/	21	/	/	/
OVAM	301	17	6%	4%	1%
VLM	978	14	1%	1%	3%
VMM – Division Operational Water Management	/	0	0%	0%	0%
VMM – Division Water Reporting	25	0	0%		
MOW – Division Maritime Access	0	0	0%	0%	/
Provincial supervisors	1	0	0%	0%	0%
Municipal supervisors	2,916	175	6%	6%	5%
Local police supervisors	3,281	56	2%	5%	7%
Total	9,905	447	5%	4%	5%
2013	14,319	626	4%	/	/

**Table 30: Number of imposed administrative measures compared to the number of inspections during which a breach was identified in 2012, 2013 and 2014**

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

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

the Government of Flanders, are all authorised to respond to petitions for the imposition of an administrative measure. That is why table 31 reflects the number of administrative measures that were imposed following a petition, next to the types of administrative measures.

In order to find out what is the share of administrative measures that were not implemented within the set term, the different actors were asked to give this number for the present environmental enforcement report as well. These numbers are reflected in table 31, together with the total number of imposed administrative measures.

## ADMINISTRATIVE MEASURES

ENFORCEMENT ACTOR	Prohibition order		Regularisation order		Administrative coercion		Combination of the administrative measures mentioned		Imposed following a request		It was impossible to have the administrative measure implemented within the set term	
	N	%	N	%	N	%	N	%	N	%	N	%
ALBON	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
AMI	5	25%	8	40%	0	0%	7	35%	1	5%	/	/
AMV	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
ANB	2	1%	137	95%	0	0%	5	3%	0	0%	36	25%
AWZ	/	/	/	/	/	/	/	/	/	/	/	/
AWV	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
VAZG	/	/	/	/	/	/	/	/	/	/	/	/
Shipping Agency	0	0%	0	0%	0	0%	21	100%	1	5%	0	0%
OVAM	0	0%	0	0%	17	100%	0	0%	0	0%	0	0%
VLM	1	7%	11	79%	1	7%	1	7%	0	0%	3	21%
VMM – Division Operational Water Management	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
VMM – Division Water Reporting	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
MOW – Division Maritime Access	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Provincial supervisors	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Municipal supervisors	64	37%	83	47%	10	6%	18	10%	16	9%	21	12%
Local police supervisors	9	16%	43	77%	1	2%	3	5%	0	0%	8	14%
<b>Total</b>	<b>81</b>	<b>18%</b>	<b>282</b>	<b>63%</b>	<b>29</b>	<b>6%</b>	<b>55</b>	<b>12%</b>	<b>18</b>	<b>4%</b>	<b>68</b>	<b>15%</b>
2013		16%		68%		4%		12%		7%		11%
2012		34%		49%		5%		12%		13%		13%

Table 31: Types of administrative measures imposed in 2014

To place the data above in perspective or to interpret them, the following remark should be taken into consideration:

- ▶ The Environmental Inspectorate Division (AMI) stated that it was not possible to give a clear answer to the question about the number of cases in which it was not possible to implement the measure within the imposed term. Settling/executing administrative measures does not always run in accordance with the calendar year. An administrative measure often includes various actions that need to be undertaken by the company but which cannot all be implemented simultaneously; nor can all measures be inspected immediately after the period has lapsed etc. Because of this, clear and correct reporting about this by the Environmental Inspectorate Division is not possible and this division chose not to answer this question.

Table 31 shows that the majority of the total of 447 administrative measures imposed in 2014 were regularisation orders, namely 63% of the total of imposed administrative measures. During previous years too, this was the most used type of administrative measure.

In 2014, a total of 81 prohibition orders were imposed, which represents more than 18% of the total number of administrative measures imposed. One type of administrative measure that was used on a rather limited scale both in 2014 and during previous years is the administrative coercion.

In 2014, this form was applied on 29 occasions, which is 6% of the total number of administrative measures imposed. In 2012 this was 4% and in 2013 5%.

About 4% of the total number of administrative measures were imposed following a petition. This is a decline compared to 7% in 2013 and 13% in 2012. In 2014, only the municipal supervisors, the Shipping Agency and the Environmental Inspectorate Division (AMI) imposed administrative measures following a petition.

The above data show that it was impossible for no less than 68 of the total of 447 imposed administrative measures to have these measures carried out within the imposed term. This comes down to 15%, which is also an increase in this ratio compared to 2012 and 2013. In 2012, it was indeed not possible to have 11% of the total of imposed administrative measures carried out within the

imposed term and in 2013 it amounted to 13%. A prerequisite for the effectiveness of administrative measures is that they are actually implemented within an imposed term. Delaying this measure may result in greater damage and higher risks. The instrument 'administrative penalty payment' can provide a solution for applying additional pressure when the administrative measure is not performed in time.

### 3.8.2 Appeals against decisions to impose administrative measures

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

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

In 2014, 60 appeals were lodged with the Minister against decisions to impose administrative measures. This is an increase compared to the 38 appeals that were lodged in both 2012 and 2013. Conversely, it was stated earlier that the number of administrative measures imposed decreased in 2014. In 2012 and in 2013, 624 and 626 administrative measures were imposed respectively, while in 2014 this total dropped to 447. This means that the level of appeal against administrative measures in 2014 was around 13.5%, while in 2012 and 2013 this was only 6%.

Of the 60 submitted appeals in 2014, 21 files were related to environmental hygiene and 39 to environmental management.

The AMMC is responsible for the preparation of the appeal file, this means that it studies the admissibility, organises where necessary a hearing and drafts an opinion for the minister. With the figures, received via the questionnaire of the AMMC, it was stated that 8 appeals were deemed inadmissible and 52 were declared admissible.

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

Since the administrative measures expire if no decision is reached in time, it is important for the Minister to reach a decision within the term laid down by Flemish Parliament Act. Table 32 gives an overview of the decisions of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2012, 2013 and 2014.

## APPEALS

	2014	2013	2012
Total number of admissible appeals	52	38	26
Decision by the Minister within the term laid down by the Flemish Parliament Act	45	28	26
Number of appeals declared well-founded	14	3	4
Number of appeals declared partially well-founded	12	5	4
Number of appeals declared unfounded	15	18	18
Number of appeals declared devoid of purpose	4	2	0

**Table 32: Comparison of the decision of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2014**

The above table shows that in 2014 a decision about the 45 admissible appeals was always reached within the term laid down by Flemish Parliament Act. For the other 7 appeal files, the term within which the minister must reach a ruling had not lapsed when this report was made.

The majority, namely 33%, was declared unfounded in 2014, whereas 27% was declared partially well-founded

<sup>21</sup> The difference between an inadmissible appeal and an appeal devoid of purpose can be illustrated with a few examples. An inadmissible appeal does not satisfy the admissibility conditions for the appeal. For example: the period of appeal has not been respected or the appeal file does not contain a copy of the contested decision. Appeals declared devoid of purpose are, for example, the

and 31% completely founded in 2014. In addition, 9% of the admissible appeals were declared devoid of purpose<sup>21</sup>. This ratio is slightly different than in 2012 and 2013 when 69% and 47% respectively of the total appeals were dismissed, 15% and 13% partly upheld, and 15% and 8% fully upheld. The conclusion could be drawn from this that not only were more appeals lodged, but also that an increasing number of appeals were upheld or partly upheld.

Table 33 shows the percentage of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, both for 2014 as 2013 and 2012.

## ADMINISTRATIVE MEASURE

NATURE OF THE ADMINISTRATIVE MEASURE IMPOSED	2014	2013	2012
Prohibition order	15%	9.18%	20.83%
Regularisation order	16%	4.25%	3.26%
Administrative coercion	10%	14.29%	3.13%
Combination of the administrative measures stated	0%	9.21%	24.02%

**Table 33: Percentage share of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, in 2014**

Table 33 shows that appeals in 2014 were largely lodged against the prohibition orders and the regularisation orders. Appeals were lodged 12 times against a total of 81 prohibition orders imposed in 2014 and 45 times against a total of 282 regularisation orders imposed. In 2012, the combination of the various types of administrative measures had the highest level of appeal (appeals were lodged against almost  $\frac{1}{4}$  of these combination measures), while in 2013 appeals against administrative coercion were the most prevalent.

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

Article 16.4.18, §4 of the Environmental Enforcement Act stipulates that an appeal can be lodged with the Minister against the refusal to impose an administrative measure.

appeals whereby the administrative measure was revoked by the supervisor himself, after all conditions - contained in the administrative measure decision - were satisfied by the offender. The subject of the appeal disappears, because the offender complies with the ruling, but after the appeal has been ruled admissible.

The Minister will reach a relevant decision within a term of sixty days following receipt of the appeal. The Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy advises the Minister in these appeals.

Table 34 gives an overview of the number of appeals lodged against refused petitions to impose administrative measures.

The table shows that, in 2014, 10 appeals were lodged against refused petitions for the imposition of administrative measures, all relating to environmental

hygiene. This is an increase compared to 2012 and 2013 when 6 and 7 such appeals were lodged.

80% of the lodged appeals were declared inadmissible, which means that two appeals were declared unfounded. Not a single appeal was declared partially well-founded.

In 7 of the 8 admissible appeals, the decision was reached within the term of 60 days provided in the decree. In 1 appeal file, no ruling has yet been issued, but the competent minister has been granted an extension of the term.

## ENVIRONMENTAL ENFORCEMENT INSPECTIONS

	2014	2013	2012
Total appeals against rejected petitions for imposing administrative measures	10	7	6
Number of appeals declared admissible	8	5	4
Number of appeals declared well-founded	0	0	0
Number of appeals declared partially well-founded	0	2	1
Number of appeals declared unfounded	6	1	3
Number of appeals declared devoid of purpose	1		
Appeals for which a decision was reached within the period of 60 days laid down by the Flemish Parliament Act	7	7	6

**Table 34: Number of appeals lodged against refused petitions for the imposition of administrative measures**

### 3.9 EVALUATION OF THE INSTRUMENT 'SAFETY MEASURE'

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

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

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

Applying a safety measure is thus an administrative act for which the supervisors, the mayors and the provincial governors have discretionary competence.

Contrary to the supervision and the enforcement instruments discussed in this chapter the use of safety measures completely falls outside the enforcement process. Safety measures are only imposed when there may be serious danger to people or the environment. Consequently, safety measures are a totally separate category within the Environmental Enforcement Act. Therefore, they are neither an administrative measure, nor an administrative fine, nor a criminal penalty. Although these are restrictive measures, they do not presuppose any error by the person they are aimed at, and neither are they intended to penalise. What prevails in a safety measure is the general interest, including the protection of public health, order, peace and quiet, and safety<sup>22</sup>. Because safety measures can be imposed by supervisors, amongst others, as described in the Environmental Enforcement Act, they are still included as instruments in this chapter. However, the idea is not to compare the number of imposed safety measures to the total number of implemented environmental enforcement inspections, as was the case for the other instruments. It will only be examined how many and which safety measures were taken by which actors.

Table 35 gives an overview of the number and type of imposed safety measures, broken down by environmental enforcement actor, in 2012. The supervisory bodies were also asked to indicate the number of safety measures which could not be implemented within the imposed term. The result is presented in table 35. In addition, the table shows the total number of safety measures, per actor, for 2013 and 2012.

<sup>22</sup> Explanatory Memorandum; parliamentary proceedings, Session 2006-2007, 13 June 2007, Document 1249 (2006-2007) - No. 1, pages 12 and 15.

## SAFETY MEASURES

ENFORCEMENT ACTOR	The suspension or execution of works, actions, or activities	The prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	The complete or partial closure of a plant	The seizure, storage, or removal of relevant objects, including waste and animals	No entry to or leaving of certain areas, grounds, buildings, or roads	Combination	Total	It was not possible to have the measure carried out within the set term
ALBON	0	0	0	0	0	/	0	0
AMI	0	0	0	0	0	2	2	/
AMV	0	0	0	0	0	/	0	0
ANB	0	0	0	0	0	/	0	0
AWZ	0	0	0	0	0	/	0	0
AWV	0	0	0	0	0	/	0	0
VAZG	/	/	/	/	/	/		/
Shipping Agency	0	0	0	21	0	/	21	8
OVAM	0	0	0	0	0	/	0	0
VLM	0	0	0	0	0	/	0	0
VMM – Division Operational Water Management	0	0	0	0	0	/	0	0
VMM – Division Water Reporting	0	0	0	0	0	/	0	0
MOW – Division Maritime Access	0	0	0	0	0	/	0	0
Provincial supervisors	0	0	0	0	0	/	0	0
Municipal supervisors	26	7	3	11	6	/	53	5
Local police supervisors	14	1	1	4	1	/	21	0
<b>Total</b>	<b>40</b>	<b>8</b>	<b>4</b>	<b>36</b>	<b>7</b>	<b>2</b>	<b>97</b>	<b>13</b>
2013	58	15	10	37	6	/	126	18
2012	34	2	11	30	1	/	78	9

Table 35: Nature of the imposed safety measures

To place the data above in perspective or to interpret them, the following remark should be taken into consideration:

- ▶ The Environmental Inspectorate Division (AMI) stated that it was not possible to give a clear answer to the question about the number of cases in which it was not possible to implement the measure within the imposed term. Imposing/implementing safety measures does not always run parallel with the calendar year, a safety measure often includes various actions that need to be undertaken by the company but which cannot all be implemented simultaneously; nor can all measures be inspected immediately after the period has lapsed. Because of this, clear and correct reporting about this by the Environmental Inspectorate Division is not possible and this division chose not to answer this question.

In 2014, a total of 97 safety measures were imposed. This is an increase compared to the 78 safety measures that were imposed in 2012, but a decrease compared to the 126 safety measures that were imposed in 2013.

Similar to previous years, the majority of safety measures, namely 55% of the total number of imposed safety measures were imposed by municipal supervisors. In 2014, local police supervisors imposed 21 safety measures. Only two regional supervisory bodies imposed safety measures in 2014, namely nv De Scheepvaart (Shipping agency) and the AMI.

In 40 of the 97 imposed measures, the safety measure was a discontinuation or execution of operations, actions or activities, in 37% the safety measure related to the seizure, storage or removal of relevant objects, including waste and animals, and in 4% of cases, the safety measure involved the partial or complete closure of an installation.

Eight times - seven times imposed by municipal supervisors and once by a supervisor of the local police - the safety measure involved the prohibition on the use or the sealing of buildings, installations, machinery, equipment, means of transport, containers, premises and everything therein or thereon. No entry to or leaving of certain areas, grounds, buildings, or roads

was imposed seven times as safety measure - six times by municipal supervisors and once by a supervisor of the local police. The safety measures by AMI involved a combination of the possible actions.

The above data show that, in 2014, 13% of the total number of imposed safety measures were not carried out within the imposed term. The fact that slightly more than 1/10 of the safety measures were not implemented during the imposed period is a fact that also arose in the previous environmental enforcement reports. In 2012, 12% of the safety measures imposed were not implemented in time. In 2013, this figure was 14% of the total number of safety measures imposed in that year.



## 4 EVALUATION OF THE FLEMISH ENVIRONMENTAL SANCTIONS POLICY

With the addition of Title XVI 'Supervision, Enforcement and Safety Measures' to the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy a framework was created within which, in addition to criminal sanctions, administrative sanctions can also be applied in the form of alternative and exclusive administrative fines, whether or not with a deprivation of benefits<sup>23</sup>. To this end, a distinction was made between environmental offences and environmental infringements. The latter are non-serious breaches of administrative obligations, which do not involve any danger to people or the environment, and which are listed exhaustively by the Government of Flanders in the annexes to the implementing order of the Environmental Enforcement Act<sup>24</sup>. No criminal sanctions can be applied in relation to such environmental infringements under DABM, but exclusive administrative fines can be imposed by a new regional body that was created for this purpose, namely the Environmental Enforcement, Environmental Damage and Crisis Management Division (afdeling Milieuhandhaving, Milieuschade en Crisisbeheer or AMMC) of the Department of Environment, Nature and Energy. Alternative administrative fines, on the other hand, can only be imposed for environmental offences. In principle, such offences can be prosecuted, but when the public prosecutor decides not to do so and notifies the AMMC of this in due time, the environmental offence can be penalised by the AMMC with an alternative administrative fine. The decision whether or not to prosecute a case is reached on the basis of the Classification Document ('Sorteernota'). This document of the public prosecutor aims to determine which cases will be processed by the public prosecutor's offices themselves and which cases will be referred to the AMMC, so that each official report is processed in an appropriate manner. This is determined on the basis of a number of technical/legal, legal/economic, criminological and practical considerations.<sup>25</sup>

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

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

If the public prosecutor has informed the AMMC in due time of his or her decision not to prosecute the environmental offence, the AMMC must start the procedure for a possible imposition of an alternative administrative fine. After receiving this decision, the AMMC must inform the suspected offender within a period of 30 days of its intention to impose an

<sup>23</sup> A deprivation of benefits is a sanction by which an offender is made to pay an amount (which may be an estimated amount) equal to the amount of the net financial benefit obtained from the environmental infringement or the environmental offence (as defined in the VHRM glossary).

<sup>24</sup> In the future the criterion 'administrative obligation' will no longer apply in view of the further decriminalisation of certain breaches of environmental law (adaptation of the Environmental Enforcement Act in 2013).

<sup>25</sup> This Classification Document is available at: <http://www.vhrm.be/sorteernota-openbaar-ministerie>

alternative fine (possibly with a deprivation of benefits). The AMMC then has 180 days to decide whether an alternative administrative fine (possibly accompanied by a deprivation of benefits) will be imposed. Within ten days the suspected offender must be informed of this decision.

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

In 2012, the administrative transaction was introduced by the Flemish Parliament Act of 20 April 2012 containing various provisions regarding environment and nature<sup>26</sup>, of which the procedure entered into effect on 23 August 2012. The terms of the administrative transaction were laid down by decree of 6 July 2012<sup>27</sup>. Before the procedure for the imposition of an alternative or exclusive administrative fine is started the AMMC can make a proposal for the payment of a fine for "more straightforward" environmental offences or infringements that have a limited impact on the environment. However, to this end the breaches must unmistakably be the fault of the offender. If the offender does not pay this type of 'amicable settlement' in time, the regular procedure for the imposition of fines is resumed. This new instrument is oriented towards small environmental and nuisance breaches that have a limited impact on the environment, but which have a disturbing effect on society. For an environmental offence the administrative transaction cannot exceed 2,000 euros, for an environmental infringement this is maximum 500 euros.

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

Hence, in this section, in which an evaluation will be made of the Flemish sanctions policy in 2014, we will not only look at the activities of the public prosecutor's offices, but also at those of the AMMC, the Environmental Enforcement Court and the Flemish Land Agency.

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<sup>26</sup> Publication Belgian Official Journal 22 May 2012.

<sup>27</sup> Government of Flanders Decree of 6 July 2012, Belgian Official Journal 13 August 2012.

## 4.1 EVALUATION OF THE CRIMINAL SANCTIONS POLICY

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

In the present environmental enforcement report it is therefore important to evaluate the criminal sanctions policy pursued in 2014. That is why the Flemish High Enforcement Council for Spatial Planning and Environment addressed the Board of Procurators General, asking, among other things, about the number of cases submitted to the public prosecutor's offices in the Flemish Region, and what treatment those cases received.

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

The figures come from a central database (REA/TPI system) of the statistical analysts connected to the general prosecutor's offices and the Board of Procurators General, which is based only on registrations by the criminal divisions of the public prosecutor's offices of the courts of first instance, and does not contain any data on the number of environmental cases processed by the general prosecutor's offices or the cases related to environmental matters processed by police prosecutors<sup>28</sup>. Of the 28 public prosecutor's offices in Belgium (including the federal public prosecutor's office) before the reform of the judicial landscape on 1 April 2014, there are 27 public prosecutor's offices that enter criminal cases in the information system REA (courts of first instance). Only the public prosecutor's office in Eupen does not register data in REA.

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

The Flemish High Enforcement Council for Spatial Planning and Environment asked whether it was possible to only reflect cases that had occurred in the Flemish Region. This limitation to Flanders was achieved by, on the one hand, counting the cases processed by the Flemish public prosecutor's offices and, on the other hand, for the judicial district of Brussels, counting all cases that came in after 1 April 2014 at the public prosecutor's office of Halle-Vilvoorde and for the cases that came in prior to 1 April 2014 introducing a limitation based on a combination of the reporting authority (where official reports drawn up by police departments located in the Brussels Capital Region were not taken into account) and the location where the breach took place (where breaches committed outside the Flemish Region were not taken into account). In the tables later in this document, mention is made for this environmental enforcement report 2014 of Brussels, because for the judicial court district of Brussels, the data partly (first quarter) related to cases that came in the public prosecutor's office of Brussels before it was split. For the other public prosecutor's offices/court districts, the data is also presented on the basis of the former judicial landscape. For example, since 1 April 2014, the public prosecutor's office of East-Flanders covers the divisions of Ghent, Oudenaard and Dendermonde. In the table, the details for each of these divisions are stated as separate court districts.

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

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<sup>28</sup> It should be pointed out that a few cases relating to nature protection law fall under the competence of the police prosecutors and the police courts (e.g. official reports drawn up in relation to breaches of forestry legislation or fishing legislation, even if the breaches are considered to be major offences). Hence, these environmental cases are not all included in the figures, as they are not all counted in the REA/TPI figures. In this field the registration within the public prosecutor's offices will be standardised in the future.

Simplified official reports<sup>29</sup> are not included in the database of the public prosecutor's offices. The public prosecutor's offices are only provided with a list of simplified official reports. However, if the official report is still requested by the public prosecutor's office, the database will take these cases into account. The problem is that these simplified official reports are included in the General National Database (see Chapter 2) and the figures below contain an underestimation of the number of simplified official reports that were effectively drawn up.

Generally speaking, it should be stated that the statistics on crime or infractions of the regulations, and should therefore not be interpreted as such.

It should be pointed out that it is still too early to draw conclusions based on the data extracted on 10 January 2015 about the different ways in which the cases registered in 2014 were processed. The figures are merely indicative for both years, since the state of progress of these cases could still have changed after the extraction date. Nevertheless, the attempt is made to identify some trends.

Cases submitted to the public prosecutor's office are assigned a main charge and possibly one or more additional charge codes (prevention codes) by the public prosecutor. However, this registration of additional charge codes does not take place everywhere. The statistics below are based on all cases for which at least one of the following charge codes as used by the public prosecutor's offices was recorded, with the classification per topic proposed by the VHRM (nature protection law, waste, manure, licences and emissions)<sup>30</sup>:

- ▶ Nature protection law<sup>31</sup>:
  - ▶ 63A - Hunting
  - ▶ 63B - Fishing
  - ▶ 63M - Flemish Parliament Act on Forests
  - ▶ 63N - Washington Convention - protected animal species, plants and ivory
  - ▶ 64J - Flemish Parliament Act on nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements
- ▶ Waste<sup>32</sup>:
  - ▶ 64E - Illegal dumping
  - ▶ 64F - Waste management
  - ▶ 64L - Import and transit of waste (Law of 9 July 1984)
- ▶ Manure:
  - ▶ 63I - Manure
  - ▶ 63O - Flemish Parliament Act on Manure
- ▶ Licence:
  - ▶ 64D - Commodo-Incommodo (Environmental Licence)
  - ▶ 64H - Operation of an unlicensed plant
  - ▶ 64I - Non-compliance with Vlare legislation
- ▶ Air/water/soil/noise (emissions):
  - ▶ 64A - Air and water pollution
  - ▶ 64B - Carbon monoxide
  - ▶ 64C - Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)
  - ▶ 64G - Illegal water abstraction

<sup>29</sup> A simplified official report implies that the most important data about certain non-serious breaches are recorded on an electronic medium. The police only carry out summary investigations or requests for information if necessary. In this way, the reception of redundant documents by public prosecutor's offices is reduced.

<sup>30</sup> It should be noted that in the final selection, cases are included that, as breach, do not in the strict sense fall under the Environment Enforcement Act. These concern the import and export of waste, for example, regional material, while the transit thereof only became regional material on 1 July 2014 (thanks to the sixth state reform) and was a federal competence until 30 June 2014. Since within the cases registered with code "64L - Import and transit of waste (Law of 12 May 2011)" no distinction can be made between those relating to import and export on the one hand and those relating to transit on the other, all cases registered with this code are charged. In addition, it should be noted that cases registered under code "63N" concern a regional competence except import, export and transit of exotic plants and animals, which is a federal competence. For clarification of the above data, it should be stated that the code 63N (Convention of Washington - protected animal species, plants and ivory) does not, strictly speaking fall under environment management since environmental law is defined

in the Environment Enforcement Act as the totality of legal rules directed at the management of the environment and nature on the one hand and nature conservation and the promotion of biological and landscape diversity on the other, more specifically the regulations stated in article 16.1.1, first paragraph sections 2°, 3°, 4°, 7°, 14°, 15° and 16°, of the Environment Enforcement Act. Finally it should be stated that in addition to the matters concerning the manure decree (code 63O), the cases with code "63I - Fertilisers" were selected, the latter because there is a genuine chance that a section of the cases registered by the public prosecutor's administration with code 63I are, in practice, breaches that are monitored regionally. Although the conscious choice to make a broad selection can have resulted in a number of cases being incorrectly counted in this contribution to the environmental enforcement report, it is also true that there is no specific charge code for other breaches that can involve both federal and regional material (e.g. breaches relating to certain product standards).

<sup>31</sup> In the future, we shall study whether code 63H can be added as well. This code relates to phytopharmaceuticals (pesticides).

<sup>32</sup> There are no separate charge codes (number and letter) for breaches relating to the Flemish Parliament Act on Soils, which is why these are classified under the charge code 'waste'.

- ▶ 64M - Surface water pollution
- ▶ 64N - Groundwater pollution

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

First of all, a picture will be given of the total number of cases received by the public prosecutor's offices. This will be done according to the aforementioned charge codes, and, whenever possible, by reporting authority. Then, we will look at the last state of progress (on 10 January 2015) of the cases which the public prosecutor's offices received in 2014, after which we will discuss the reasons for the dismissal of the cases falling under environmental enforcement in greater detail. Given that the reference date for these data is 10 January 2015, it is important to interpret the state of progress of these cases in their right context. The relevant data and percentages only refer to the situation on 10 January 2015 and do not reflect the final status of a case. Consequently, only trends can be described and no final conclusions can be drawn yet.

In addition, the request was made, similar to the request to the supervisory agencies, to make a distinction between priority official reports and non-priority official reports in order to be able to make an analysis of the operation of the 'Priority memorandum of prosecution policy under environmental law in the Flemish Region 2013'. It is, however, stated that answering this question presupposed the creation of specific codes, which in turn requires technical adjustments and new registration guidelines. The database of the Board of Procurators General does not as yet allow a distinction to be made within the selected cases between priority and non-priority files. It was, however, stated that a solution was being sought in this matter

Finally, attention can be drawn in this section to the different partnerships between public prosecutor's offices<sup>33</sup>. One of the results is that the majority<sup>34</sup> of environmental enforcement cases of the public

prosecutor's offices in the province of West Flanders are dealt with by the former public prosecutor's office of Kortrijk (current division Kortrijk) and that in East Flanders the majority of cases are treated by the former public prosecutor's office of Ghent (current division Ghent)<sup>35</sup>. In the partnership between the public prosecutor's offices of Mechelen and Turnhout in the judicial district of Antwerp all the environmental enforcement cases of Mechelen are processed by the former public prosecutor's office of Turnhout (current division Turnhout)<sup>36</sup>.

However, in the figures and tables below these dossiers are still registered with the respective territorial former public prosecutor's offices (current divisions), depending on where the breach was committed.

<sup>33</sup> The partnership between the public prosecutor's offices of West Flanders became operational on 1 November 2010. The partnership between the public prosecutor's offices of Mechelen and Turnhout became operational on 1 January 2011. The partnership between the public prosecutor's offices of East Flanders became operational on 1 December 2011.

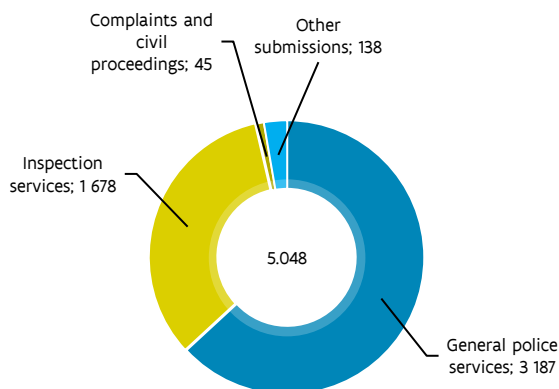
<sup>34</sup> In this case the public prosecutor's office of Kortrijk processes all the environmental offences in West Flanders (with charge codes 63A, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M and 64N), with the exception of illegal dumping and waste incineration by private individuals, the Flemish Parliament Acts on Forests and River Fishing (these so-called 'liveability offences' are still processed within the various territorial public prosecutor's offices).

<sup>35</sup> The public prosecutor's office of Ghent (partnership between public prosecutor's offices in East Flanders) processes all the environmental prosecution files of the province of East Flanders (with charge codes 63A, 63M, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M and 64N), with the exception of the dossiers regarding illegal dumping and waste incineration by private individuals, river fishing and noise nuisance (Code 64C) in keeping with the Royal Decree of 24 February 1977 (these cases are still processed by the various territorial public prosecutor's offices).

<sup>36</sup> In this case it concerns the environmental enforcement cases with charge codes 63A, 63B, 63M, 63N, 63O, 64A, 64C, 64D, 64E, 64G, 64F, 64H, 64I, 64L, 64M and 64N.

## 4.1.1 Reception

Graph 11 shows the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014, per reporting authority, and subdivided into four different categories, namely general police, inspection services, complaints and civil proceedings, and other submissions.<sup>37</sup>



**Graph 11: Number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014, per reporting authority.** Source: database of the Board of Procurators General - statistical analysts

Overall, the public prosecutor's offices received 5,048 environmental cases in 2014, of which 63% or 3,187 cases originated from the general police and 33% or 1,678 cases from the inspection services. The category 'general police' comprises both local and federal police forces. The inspection services, on the other hand, are administrative services with a limited competence to report breaches, such as the regional environment administrations (supervisors). A small number of the total number of received cases, namely 3% or 138 cases, were 'other submissions'. These include submissions from other public prosecutor's offices and courts, from other sections of the same public prosecutor's office, from foreign public prosecutor's offices/courts and from courts belonging to the same judicial district that give rise to the creation of a new case. This category is also a residual category for any cases which do not fall into any of the other three categories. Dossiers received from municipal supervisors and supervisors of intermunicipal associations also come under this category. In addition, 45 cases or 0.89% pertained to complaints and civil

<sup>37</sup> Cases recorded by the public prosecutors of the police courts are not included in the provided figures.

proceedings. It concerns complaints from private persons, as well as complaints from bailiffs or from private organisations and civil plaintiffs.

More than half of the dossiers which the public prosecutor's offices received in 2014 were drawn up by the general police. In Chapter 2 it was already indicated that the general police drew up 15,685 official reports with regard to the environment. Since this number includes the initial as well as the simplified official reports this could explain the difference with the number of dossiers which the public prosecutor's offices received in 2014. It should be remarked that no distinction can be made here between official reports drawn up by the local police with general identification authority on the one hand and official reports drawn up by local police supervisors on the other.

On the basis of the data from the Environmental Enforcement Report 2012 and the Environmental Enforcement Report 2013 a comparison can be made in table 36 between the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region by reporting authority in 2012, 2013 and 2014.

The table indicates that in 2013 the number of files that was registered decreased compared to 2012, but the total increased again in 2014 and that just a few more files were registered in 2014 than in 2012. It is striking that the number of files

### ENVIRONMENTAL ENFORCEMENT CASES

	2014	%	2013	2012
General police services	3,187	63.13	2,899	3,237
Inspection services <sup>38</sup>	1,678	33.24	1,551	1,570
Complaints and civil proceedings	45	0.89	48	36
Other submissions	138	2.73	123	178
<b>Total</b>	<b>5,048</b>	<b>100</b>	<b>4,621</b>	<b>5,021</b>

**Table 36: Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per reporting authority in 2014** Source: database of the Board of Procurators General - statistical analysts

recorded by the inspection services has increased by more than 100, compared both to 2012 and to 2013. It can also be concluded that the ratio between the

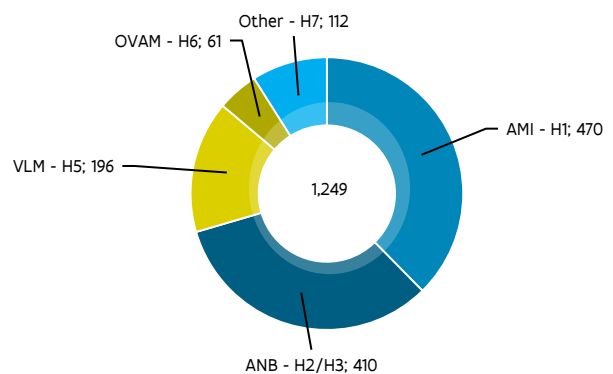
<sup>38</sup> The inspection agencies are the administrative services with limited citation competence. It concerns, within the framework of this analysis, primarily the regional environmental administrations.

number of cases per citing authority and the total number of environmental enforcement cases registered by the criminal departments at the public prosecutor's offices in the Flemish Region remained the same in 2014, 2013 and 2012. The general police were, in more than 60% of the total number of files, the citing authority, while the inspection services were the citing authority in 1/3 of the cases.

In 2003, a technical working group was set up within the Committee on Prosecution Policy<sup>39</sup>, with the aim of improving insight into cases submitted to the public prosecutor's offices by the environment services of the Flemish Region. The only code that was available then at the level of the environment services of the Flemish Region was M2. However, it was decided to use, from 1 January 2005 onwards, specific codes within the reference numbers provided to the public prosecutor's offices by the environment services. Initially, the following codes were created:

- H1 : Environmental Inspectorate Division
- H2 : Forests & Green Areas
- H3 : Nature
- H4 : Water
- H5 : Manure Bank
- H6 : OVAM
- H7 : Other<sup>40</sup>

The use of these specific reference numbers made it possible to draw up the graph 12 which makes a further sub-division into the environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012, 2013 and 2014 per Flemish environmental enforcement service. This shows how many cases each Flemish environment service submitted as reporting authority.



**Graph 12: Number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014- Source: database of the Board of Procurators General - statistical analysts**

In 2014, a total of 1,249 cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region which originated from the Flemish inspection services that used the above codes. The majority of these cases, that is 38%, come from the Environmental Inspectorate Division (AMI). The Agency for Nature and Forests (ANB)<sup>41</sup> also represents a substantial share of the total number of cases from the Flemish inspection services, namely 33%. The Public Waste Agency of Flanders (OVAM) and Flemish Land Agency (VLM) account respectively for a share of 5% and 16%.

In comparison to the chapter 'Evaluation of the instrument 'official report'' a few differences can be observed between the number of indicated official reports drawn up by the enforcement actors and the number of reports received by the criminal divisions of the public prosecutor's offices in the Flemish Region. The Agency for Nature and Forests, for instance, indicated that, in 2014, 653 initial official reports were drawn up, although the public prosecutor's offices only received 410 in 2014. This can be explained by the fact that this agency also draws up official reports that are dealt with by police prosecutors. A higher number of drawn up official reports (respectively 475, 207 and 63) was also given by AMI, VLM and OVAM than was received by the public prosecutor's offices (respectively 470, 196 and 61)

<sup>39</sup> The Committee on Prosecution Policy is the predecessor of the Flemish High Enforcement Council for Spatial Planning and Environment and aimed to be a work platform regarding environment and spatial planning at the regional level where priorities were laid down and agreements were made between the official level and the public prosecutor's offices. However, this Committee did not have any legally embedded framework, as opposed to the Flemish High Enforcement Council for Spatial Planning and Environment.

<sup>40</sup> H7 mainly includes official reports coming from the Administration for Roads and Traffic and the Administration for Waterways and Maritime Affairs. As there

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

<sup>41</sup> Currently, 'Forests & Green Areas' and 'Nature' together form the Agency for Nature and Forests (Agentschap voor Natuur en Bos or ANB). This is reflected accordingly in the above graph, where ANB combines the cases falling under H2 and H3. Since 2008, ANB has only used the code H2.

in 2014. The other regional supervisory bodies state that together they have drawn up a total of 143 official reports in 2014, while the public prosecutor's offices have received only 112 files under the heading "other". The figures from the public prosecutor's offices are probably an underestimation, as not all Flemish environment administrations seem to be familiar with the possibility of using a specific code. As a result, the process by which some cases were included in the figures above cannot be identified. The VHRM again recommends that the different environment administrations make consistent use of these codes.

On the basis of the data from the Environmental Enforcement Report 2012 and the Environmental Enforcement Report 2013 table 37 makes a comparison of the number of environmental enforcement cases originating from the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012, 2013 and in 2014.

#### ENVIRONMENTAL ENFORCEMENT CASES

	2014	%	2013	2012
AMI - H1	470	37.63	427	476
ANB - H2/H3	410	32.83	425	460
VLM - H5	196	15.69	158	118
OVAM - H6	61	4.88	44	30
Other - H7	112	8.97	62	63
Administration Spatial Planning, Housing, Monuments and Landscapes (RW)	/	/	1	/
<b>Total</b>	<b>1,249</b>	<b>100</b>	<b>1,117</b>	<b>1,147</b>

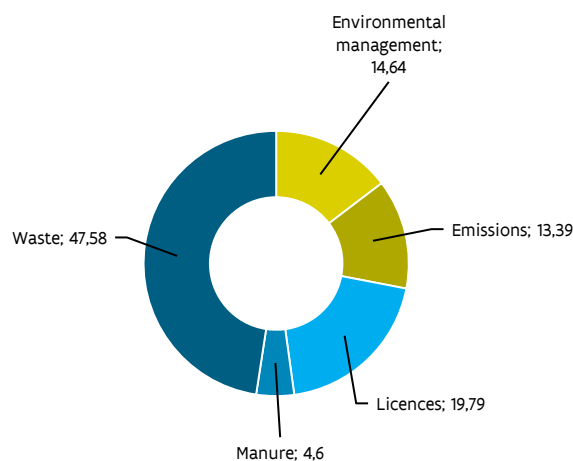
**Table 37: Number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012, 2013 and 2014 - Source: database of the Board of Procurators General - statistical analysts**

The number of cases the public prosecutor's offices has received in 2014 from the different Flemish environment services has increased compared to 2013 and 2012. The increase compared to 2013 can be primarily attributed to the increase in the number of files from the AMI, VLM, the OVAM and the category 'other' (for example the Shipping Agency or the Agency for Roads and Traffic).

Earlier we have already provided an overview of the different charge codes that are used to record environmental enforcement cases. This allows us for 2014 as well to present an overview in the graphs and

tables below of the share of each charge code in the total number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014.

Graph 13 illustrates the percentages of cases recorded with the charge codes under the headings of waste, manure, licences, air/water/soil/noise (emissions) and nature protection, compared to the total number of cases recorded with one of these charge codes in 2014, namely 5,048 dossiers.



**Graph 13: Percentage of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge, for cases in 2014 - Source: database of the Board of Procurators General - statistical analysts**

More than 47% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region had a main charge code within the theme of waste. It concerned 2,402 dossiers. Cases regarding licences and emissions each represented about 14% of the total number of cases in 2014, or respectively 676 and 739 cases. In addition, 999 cases, or almost 20% of all cases, pertained to nature protection law and 232 cases, almost 5% of all cases, to manure.

Table 38 not only makes a further subdivision of the main charge codes of 'nature protection law', 'emissions', 'licences', 'manure' and 'waste', but also compares between 2012, 2013 and 2014 on the basis of the data from the Environmental Enforcement Report 2012 and the Environmental Enforcement Report 2013.



## ENVIRONMENTAL ENFORCEMENT CASES

		2014	&	2013	2012
Nature protection law	63A – Hunting	141	2.79	136	137
	63B – Fishing	178	3.53	137	114
	63M – Flemish Parliament Act on Forests	112	2.22	95	122
	63N – Washington Convention – protected animal species, plants and ivory	105	2.08	126	169
	64J – Flemish Parliament Act on Nature conservation and the natural environment	203	4.02	233	274
	Total nature protection law	739	14.64	727	816
Air/water/soil/noise (emissions)	64A – Air and water pollution	160	3.17	172	198
	64B – Carbon monoxide	3	0.06	12	12
	64C – Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)	193	3.82	264	479
	64G – Illegal water abstraction	/	/	1	2
	64M – Surface water pollution	216	4.28	194	164
	64N – Groundwater pollution	104	2.06	106	61
	Total air/water/soil/noise	676	13.39	749	916
Licences	64D - Commodo – incommodo (Environmental licence)	96	1.9	11	25
	64H – Operation of an unlicensed plant	290	5.74	286	278
	64I – Non-compliance with Vlare legislation	613	12.14	621	617
	Total licences	999	19.79	918	920
Manure	63I – Manure	67	1.33	66	44
	63O – Flemish Parliament Act on Manure	165	3.27	131	106
	Total manure	232	4.6	197	150
Waste	64E – Illegal dumping	1,779	35.24	1468	1677
	64F – Waste management	529	10.48	473	483
	64L – Import and transit of waste	94	1.86	89	59
	Total waste	2,402	47.58	2030	2219
Total		5,048	100	4621	5021

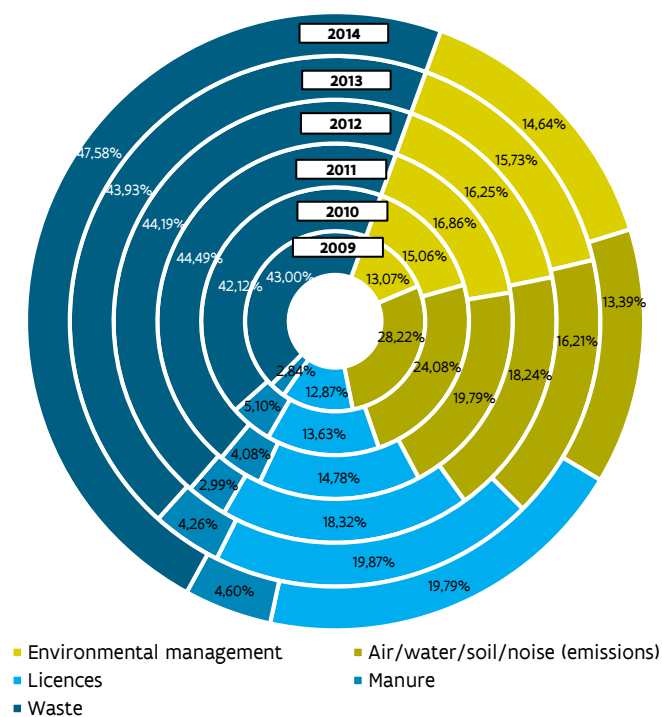
**Table 38: Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge code, for cases in 2014- Source: database of the Board of Procurators General - statistical analysts**

As indicated earlier, the majority of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region also referred to waste in 2014, namely 47%. The above table shows that within the theme of waste most cases were recorded with charge code 64E. These 1,779 cases all pertained to illegal dumping. These dossiers regarding illegal dumping not only constitute the largest share within the theme 'waste' (47%), but also within the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's

offices in 2014. No less than 35% of all the cases pertained to illegal dumping in 2014. This trend could also be observed in the Environmental Enforcement Report 2012, when 33% of the total number of files related to illegal dumping and in the Environmental enforcement report 2013 when 32% of the total number of files related to illegal dumping. The share of the files concerning 'illegal dumping' has thus actually increased in 2014.

Both in 2012, 2013 and in 2014 the cases with charge codes 631 'manure' and 630 'Flemish Parliament Act on Manure' constituted only a small part of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, namely 3%, 4% and 5% respectively. This could be explained by the fact that since 2006 (see below) the Flemish Land Agency can to some extent issue its own administrative fines under the Flemish Parliament Act on Manure.

Apart from a comparison of the absolute figures it is also possible to make a comparison in terms of percentage of the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge codes, in 2009, 2010, 2011, 2012, 2013 and 2014. Graph 14 gives an overview of this.



**Graph 14: Percentage of the number of environmental enforcement cases recorded by charge codes- Source: database of the Board of Procurators General - statistical analysts**

Graph 14 indicates that since the implementation of the Environment Enforcement Act in 2009, more than 40% of the total number of 'Environmental enforcement' cases were each time registered by the criminal

departments of the public prosecutor's offices of the Flemish Region related to waste. The share of these cases relating to waste has even increased since 2009. In 2014, after all, nearly half the 'Environmental enforcement' cases concerned waste.

A trend that can be graphically presented is the decrease in the percentage share of cases regarding air/water/soil/noise and the growing percentage share of cases relating to licences.

### 4.1.2 State of progress

Besides the figures regarding the amount of environmental enforcement cases received, we were also able to obtain information for the Environmental Enforcement Report 2014 on the state of progress of the environmental enforcement cases for the study period. However, it must be noted that the data extraction took place on 10 January 2015. As a result, no final conclusions can be drawn about the processing of the cases. Nevertheless, we will try to describe some trends.

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

#### PRELIMINARY INVESTIGATION

Cases which were still in the stage of preliminary investigation on 10 January 2015.

#### WITHOUT FURTHER ACTION / DISMISSAL

In cases where no further action is taken or the case is dismissed, this means that, for the time being, there will be no further prosecution of the case, and that the preliminary investigation has been concluded. The decision to take no further action is in principle always temporary. As long as the limitation period has not expired, the case can be reopened. However, it should be remarked that, statistically speaking, this category also contains the cases in which the public prosecutor decided to refer the cases to the AMMC in view of the imposition of an alternative administrative fine. As a result of this decision the limitation period expires and makes the decision final<sup>42</sup>.

<sup>42</sup> Currently, it is being examined within the expertise network of the public prosecutor whether there is a possibility to place the cases referred to the general entity under a different heading (expiry of limitation period).

## CASE REFERRED

This category comprises cases which on 10 January 2015 had been referred to another public prosecutor's office or other (legal) institutions. As long as these referred cases are not returned to the public prosecutor's office of origin, they remain in this state of progress. In other words, for this public prosecutor's office they can be considered closed. They are reopened with a different reference number by the public prosecutor's office of destination.

## AMICABLE SETTLEMENT

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

## MEDIATION IN CRIMINAL CASES

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

## INVESTIGATION

The category 'Investigation' contains the cases that are subject to a judicial investigation and have not been confirmed for the council for the regulation of the dispensation of justice.

## CHAMBERS

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

## WRIT OF SUMMONS & FURTHER PROCEEDINGS

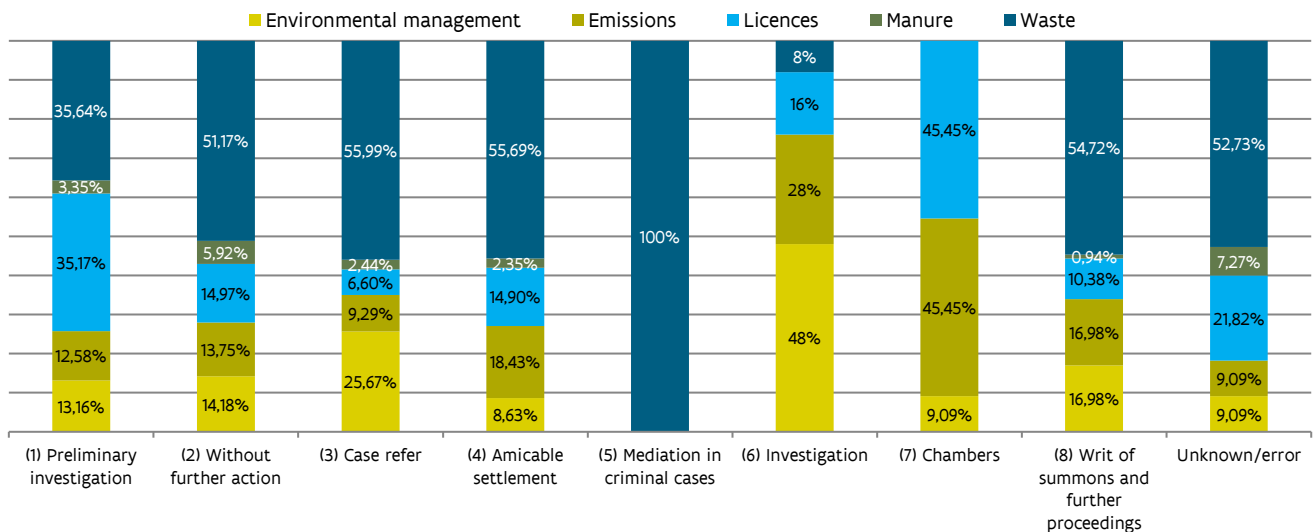
This category contains cases in which a writ of summons has been issued or a decision following a writ of summons was taken. This includes cases in which a writ of summons, a hearing before the criminal court, a sentence, an objection, an appeal, etc. has taken place.

Table 39 provides a picture of the last state of progress on 10 January 2015 for the environmental enforcement cases recorded with the criminal divisions of the public prosecutor's offices of the Flemish Region in 2014. Both the total number of cases in Flanders and the number of cases per public prosecutor's office are given. In addition, the percentage share of the different states of progress with respect to the total number of environmental enforcement cases is given, both for 2012, 2013 and 2014, in order to make a comparison possible.

## ENVIRONMENTAL ENFORCEMENT CASES

	Preliminary investigation		Without further action		Case referral		Amicable settlement		Mediation in criminal cases		Investigation		Chambers		Writ of summons and further proceedings		Unknown/error		Total
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N
Antwerp	105	28	200	53.33	8	2.13	37	9.87	.	.	4	1.07	1	0.27	18	4.8	2	0.53	375
Mechelen	72	30	151	62.92	10	4.17	3	1.25	2	0.83	.	.	.	.	1	0.42	1	0.42	240
Turnhout	112	30.19	241	64.96	5	1.35	7	1.89	.	.	.	.	.	.	3	0.81	3	0.81	371
Hasselt	34	10.73	210	66.25	14	4.42	41	12.93	1	0.32	2	0.63	.	.	8	2.52	7	2.21	317
Tongeren	66	23	181	63.07	8	2.79	17	5.92	.	.	2	0.7	.	.	12	4.18	1	0.35	287
Brussels	68	15.14	278	61.92	27	6.01	50	11.14	.	.	2	0.45	.	.	5	1.11	19	4.23	449
Leuven	82	24.92	134	40.73	65	19.76	42	12.77	.	.	.	.	.	.	6	1.82	.	.	329
Gent	230	33.77	412	60.5	14	2.06	1	0.15	.	.	3	0.44	10	1.47	7	1.03	4	0.59	681
Dendermonde	186	27	247	35.85	222	32.22	6	0.87	.	.	5	0.73	.	.	20	2.9	3	0.44	689
Oudenaarde	60	28.44	116	54.98	3	1.42	26	12.32	.	.	4	1.9	.	.	2	0.95	.	.	211
Bruges	177	39.33	236	52.44	10	2.22	5	1.11	.	.	2	0.44	.	.	15	3.33	5	1.11	450
Kortrijk	108	31.86	210	61.95	14	4.13	.	.	.	.	.	.	.	.	1	0.29	6	1.77	339
Ieper	48	23.88	102	50.75	6	2.99	14	6.97	24	11.94	.	.	.	.	5	2.49	2	1	201
Veurne	27	24.77	67	61.47	3	2.75	6	5.5	.	.	1	0.92	.	.	3	2.75	2	1.83	109
Flanders 2014	1,375	27.24	2,785	55.17	409	8.1	255	5.05	27	0.53	25	0.5	11	0.22	106	2.1	55	1.09	5,048
Flanders 2013	1,276	27.61	2,685	58.1	219	4.74	231	5	2	0.04	15	0.32	17	0.37	174	3.77	2	0.04	4,621
Flanders 2012	1,215	24.2	3,048	60.71	233	4.64	264	5.26	0	0.02	20	0.4	1	0.02	236	4.7	3	0.06	5,021

Table 39: Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014, possibly through addition to a mother case, per judicial district- Source: database of the Board of Procurators General - statistical analysts



**Graph 15: State of progress as on 10 January 2015 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014 according to the share of the charge category (waste, manure, licences, emissions and nature protection)- Source: database of the Board of Procurators General - statistical analysts**

Table 39 shows that more than 27% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were still in the stage of preliminary investigation on 10 January 2015. This has, in comparison with 2013, remained the same, but shows a slight increase over 2012.

With regards to the percentage share of the number of files that were not subject to further action, it can be stated that a certain decline is shown. In 2012, 61% of the total number of files concerning Environmental enforcement had no further effect on the extraction date, while this was 55% in 2014. The following category 'Motives for dismissal' will deal further with the reasons for this lack of referral.

The number of files that, on the extraction date, were made available has increased. These are files that were made available to another public prosecutor's office or another (legal) authority. In 2012 and 2013, this was around 5% – or 223 and 219 files respectively – of the total number of files that were referred on the extraction date. In 2014, that was 8%, or 409 files concerning 'Environmental enforcement'.

With regard to the number of amicable settlements, a constant level can be seen through 2012, 2013 and 2014. The number of files in which an amicable settlement was proposed on the extraction date hovers in those three years around 5% of the total number of environmental enforcement cases.

Both in absolute figures and in terms of percentage share compared to the total number of cases, a decline can be recorded in the cases for which a writ of summons was already issued on the extraction date. On 10 January 2013, it concerned 236 cases, or 4.7% of the total number of environmental enforcement cases. On 10 January 2014, it concerned 174 cases, or 3.77% of the total number of environmental enforcement cases. On 10 January 2015, a writ of summons had already taken place in 106 cases, or 2.1% of the total number of environmental enforcement cases that were recorded in 2014.

In 2014, an average of 361 environmental enforcement cases were recorded per public prosecutor's office. In 2013, 330 and in 2012 an average of 359 environmental cases per public prosecutor's office. What is similar to the previous Environmental Enforcement Reports, is the fact that these numbers differ greatly between public prosecutor's offices. In 2014, the public prosecutor's office of Ghent recorded 681 environmental enforcement cases, whereas the public prosecutor's offices of Veurne and Ieper, for instance, recorded respectively only 109 and 201 environmental enforcement cases in 2014. This can simply be explained by the fact that these are smaller judicial districts/judicial areas.

Graph 15 reflects, per state of progress, the share of the different categories of charge codes (waste, manure, licences, emissions and nature protection). The cases relating to waste, manure, licences, emissions and nature protection were compared to a reference value equal to 100 for each state of progress (preliminary investigation,

without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons & further proceedings, unknown/error).

It is not remarkable that the majority of cases in the different states of progress - preliminary investigation, without further action, referral, amicable settlement, mediation, investigation, Chambers and writ of summons – in 2014 pertain to waste, since the majority of the recorded environmental enforcement cases have to do with waste. On the basis of the above data, it can be concluded that more than half of the cases for which a writ of summons had been issued on the extraction date and which were not subject to further action, related to waste. Also more than 5% of the total number of cases in which on 10 January 2015 an amicable settlement had been proposed, are related to waste.

The theme 'manure' has only a small percentage share in each state of progress. This is not surprising since only 232 cases regarding manure were recorded in 2014 by the criminal divisions of public prosecutor's offices in the Flemish Region.

In the state of progress 'preliminary investigation', next to the waste cases, a large number of cases regarding licences can also be found, of which the preliminary investigation is not concluded within the year. In these cases the offender is mostly given some time to (voluntarily) rectify the unlawful situation, as a result of which taking a guiding decision (writ of summons, amicable settlement, dismissal) usually takes longer in these cases.

Table 40 gives a comparison in terms of percentage between the data from 2012, 2013 and 2014 per charge code and per state of progress in which the cases in the charge codes were in on respectively 10 January 2015. The states of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons and further proceedings, unknown/error) were compared to a reference value equal to 100, i.e. a specific category of charge code.

The above table shows that in 2014 a writ of summons was already issued for 2.41% of the total number of cases regarding waste as at 10 January 2015. This is a decline compared to 2012 and 2013. The percentage share of cases without further action regarding waste decreased

in 2014 compared to 2012 and 2013. In 2014, more cases were referred on the date of extraction pertaining to waste in terms of percentage.

With regard to the cases regarding manure it can be concluded that in 2014, just like in 2012 and 2013, the majority, namely 70%, remained without further action and almost 20% was still in the stage of preliminary investigation as at 10 January 2015. A writ of summons was only issued for 1 cases. An amicable settlement was proposed in 6 cases and 10 cases were referred on the date of extraction. This trend is similar to that of 2012 and 2013. Already an increase can be concluded in the cases referred.

Cases relating to licences also show an increase in the number of cases referred in 2014 compared to 2013 and 2012. Conversely, a decline can be seen in the percentage share of cases relating to licences for which no further action was taken on the date of extraction, although this share was still more than 40% of the total number of cases relating to licences. The share of the cases that were still under preliminary investigation on the date of extraction in 2014, namely nearly half of the total number of cases with relationship to licences, has risen compared to previous years, just as the percentage of the cases in which an amicable settlement was proposed.

For the cases regarding emissions an amicable settlement was already proposed for almost 7% on the date of extraction. This is not just an increase compared to 2012 and 2013, but it also shows that - in comparison with cases regarding waste, licences, nature protection and manure - an amicable settlement was proposed percentage wise for a large share of the cases pertaining to air/water/soil/noise. It concerns 47 cases in absolute figures. In addition, more than half of the cases pertaining to emissions remained without further action, as was the case in both 2012 and 2013. A

	Preliminary investigation			Without further action			Case referral			Amicable settlement			Mediation in criminal cases			Investigation			Chambers			Writ of summons and further proceedings			Unknown/error		
	2014	2013	2012	2014	2013	2012	2014	2013	2012	2014	2013	2012	2014	2013	2012	2014	2013	2012	2014	2013	2012	2014	2013	2012			
Environmental management	24.49	27.24	23.53	53.45	60.25	62.13	14.21	7.84	8.58	2.98	1.79	2.70	0.00	0.00	0.00	1.62	0.69	0.50	0.00	0.00	0.00	2.44	2.20	2.57	0.68	0.00	0.00
Emissions	25.59	23.10	22.05	56.66	57.81	56.88	5.62	6.81	6.77	6.95	7.48	9.28	0.00	0.00	0.00	1.04	0.53	0.44	0.00	0.00	0.00	2.66	2.67	4.48	0.74	0.27	0.11
Licences	48.55	44.66	41.63	41.74	48.47	45.98	2.70	1.42	1.52	5.62	1.85	3.16	0.00	0.11	0.00	0.40	0.22	0.65	0.00	0.00	0.00	1.10	3.38	8.15	1.20	0.00	0.22
Manure	19.83	23.35	21.33	71.12	71.07	70.00	4.31	2.54	1.33	2.59	2.54	2.67	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.43	0.51	4.67	1.72	0.00	0.00
Waste	20.40	22.12	18.30	59.33	60.54	67.24	9.53	4.58	3.83	5.91	7.24	6.13	1.12	0.05	0.04	0.08	0.20	0.27	0.00	0.00	0.00	2.41	5.22	4.15	1.21	0.00	0.00

**Table 40: Categories of charge codes (waste, manure, licences, emissions and nature protection) of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region: comparison of the percentage share in 2012, 2013 and 2014 according to the state of progress as at 10 January 2013, 10 January 2014 and 10 January 2015 respectively, per category of charges.**

decline can, however, be noted in the percentage of cases for which a writ of summons had been issued on the date of extraction. In 2012, this was still nearly 5% of the total number of cases relating to emissions and in 2014 this was only 2.66% of the total number of cases.

With regard to cases concerning nature protection it can be concluded that more than 50% (or 395 cases) remained without further action as at 10 January 2015. This is, however, a decline compared to 2012 and 2013, when more than 60% of the cases relating to environmental management had already been designated without further action. A rise can, in common with other themes, be seen in the share of the cases referred. The share of cases relating to environmental management for which a writ of summons had been issued on the date of extraction remained just above 2% in 2012, 2013 and 2014.

**NOTE:**

In the analysis above all environmental enforcement cases for which no further action was taken by the public prosecutor's offices in the Flemish Region were added up. It was indeed mentioned that 55% of the environmental enforcement cases remained without further action or were dismissed by the public prosecutor's offices in the Flemish Region, or 2,785 cases. Still, this figure needs to be put into perspective. We should take account of the fact that a large number of cases received by the public prosecutor's offices can, in fact, not be prosecuted. 'Referred' cases and 'technical dismissals' should therefore be left out of consideration. In other words, more measures are taken in environmental cases than the figures above suggest. This is because only the 'prosecutable cases' should be taken into account. For environmental enforcement cases recorded by the public prosecutor's offices in 2014 this would amount to 3,546 prosecutable cases, instead of 5,048. In this way, the results of the calculations would be that in fact an amicable settlement was already proposed in 7.19% of the recorded cases instead of 5.05% as stated above, and that a writ of summons was issued in 3 % of the cases instead of 2%. In addition it can be stated that nearly 32% of the 3,546 prosecutable cases were dismissed with the intention of imposing an administrative fine (see below).

### 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 2015, 55% of the cases had already been dismissed without further action by the public prosecutor's offices in the Flemish Region. However, for the drafting of the present environmental enforcement report the Flemish High Enforcement Council for Spatial Planning and Environment was also provided with figures that further clarify these cases that were dismissed without further action.

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

For the figures at hand the following classification was used:

- ▶ Dismissal based on the principle of opportunity:
  - ▶ limited consequences for society
  - ▶ situation regularised
  - ▶ relational offence
  - ▶ limited detriment
  - ▶ reasonable term exceeded
  - ▶ lack of precedent
  - ▶ chance events with cause
  - ▶ young age
  - ▶ disproportion criminal proceedings - social disruption
  - ▶ victim's attitude

- ▶ compensation to the victim
- ▶ insufficient investigation capacity
- ▶ other priorities
- ▶ Technical dismissal:
  - ▶ no offence
  - ▶ insufficient proof
  - ▶ limitation
  - ▶ death of the offender
  - ▶ withdrawal of the complaint (in case of offences requiring a complaint)
  - ▶ amnesty
  - ▶ incompetence
  - ▶ final judgement
  - ▶ immunity
  - ▶ absolution due to extenuating circumstances
  - ▶ absence of complaint
  - ▶ offender(s) unknown
- ▶ Dismissal for other reasons:
  - ▶ administrative fine
  - ▶ Praetorian probation
  - ▶ signalling of the offender
- ▶ Unknown/error: cases for which the reason for the absence of further action could not be determined.

Table 41 illustrates the types of 'without further action' (dismissal based on the principle of opportunity, technical dismissal and other reason for dismissal) reported by the different public prosecutor's offices in the Flemish Region, compared to all the environmental enforcement cases which were in the 'without further action' state of progress on 10 January 2015.



## REASONS FOR DISMISSAL

		Opportunity		Technical		Other		Total	
		N	%	N	%	N	%	N	%
ANTWERP	ANTWERP	46	23	68	34	86	43	200	100
	MECHELEN	44	29.14	55	36.42	52	34.44	151	100
	TURNHOUT	37	15.35	87	36.1	117	48.55	241	100
	HASSELT	60	28.57	84	40	66	31.43	210	100
	TONGEREN	69	38.12	66	36.46	46	25.41	181	100
	Total category	256	26.04	360	36.62	367	37.33	983	100
BRUSSELS	BRUSSELS	70	25.18	111	39.93	97	34.89	278	100
	LEUVEN	32	23.88	61	45.52	41	30.6	134	100
	Total category	102	24.76	172	41.75	138	33.5	412	100
GHENT	GENT	33	8.01	159	38.59	220	53.4	412	100
	DENDERMONDE	45	18.22	102	41.3	100	40.49	247	100
	OUDENAARDE	15	12.93	58	50	43	37.07	116	100
	BRUGES	9	3.81	108	45.76	119	50.42	236	100
	KORTRIJK	1	0.48	80	38.1	129	61.43	210	100
	IEPER	26	25.49	35	34.31	41	40.2	102	100
	VEURNE	11	16.42	19	28.36	37	55.22	67	100
	Total category	140	10.07	561	40.36	689	49.57	1,390	100
Total		498	17.88	1,093	39.25	1,194	42.87	2,785	100

**Table 41: Reasons for dismissal for environmental enforcement cases without further action, as at 10 January 2015, received in 2014, possibly through addition to a mother case, per judicial district - Source: database of the Board of Procurators General - statistical analysts**

The above table shows that 2,785 of the total of 5,048 environmental enforcement cases which the public prosecutor's offices received were already dismissed as at 10 January 2015. This is more than 55% of the total number of environmental enforcement cases. Of these 2,785 cases almost 18% were dismissed for opportunity-based reasons, more than 39% for technical reasons, and almost 43% for 'other reasons', namely the 'administrative fine', the 'Praetorian probation' and the 'signalling of the offender'.

In the Environmental Enforcement Report 2012 it was indicated that in 2012 a total of 60.71%, or 3,048 cases, of the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were dismissed as at 10 January 2015. The majority, namely 47.01% of the dismissed cases remained without further action for 'other reasons'. In addition, 38.06% of the dismissed cases remained without further action because of technical reasons and 14.93% for opportunity-

based reasons. In the Environmental Enforcement Report 2013, it can be concluded that in 2013, a total of 58.10%, or 2,685 cases, of the total cases 'Environmental enforcement' registered by the criminal divisions of the public prosecutor's offices in the Flemish Region were dismissed on 10 January 2014. 15.79% of the dismissed cases were dismissed for opportunistic reasons, 35.87% for technical reasons and 48.34% for other reasons.

In comparison with the figures from the Environmental Enforcement Report 2012 and the Environmental Enforcement Report 2013 a percentage decrease can generally be observed in the share of dismissed cases, but an increase in the percentage share of dismissals for opportunity-based reasons and an increase in the percentage share of dismissals for technical reasons.

## REASONS FOR DISMISSAL

	Nature protection		Emissions		Licences		Manure		Waste		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>Technical dismissals</b>	<b>103</b>	<b>26.08</b>	<b>176</b>	<b>45.95</b>	<b>94</b>	<b>22.54</b>	<b>8</b>	<b>4.85</b>	<b>712</b>	<b>49.96</b>	<b>1,093</b>	<b>39.25</b>
No offence	18	4.56	38	9.92	43	10.31	3	1.82	82	5.75	184	6.61
Insufficient proof	46	11.65	79	20.63	43	10.31	4	2.42	436	30.6	608	21.83
Dropping of criminal proceedings	2	0.51	5	1.31	3	0.72	.	.	1	0.07	11	0.39
Limitation	2	0.51	4	1.04	3	0.72	.	.	.	.	9	0.32
Death of the offender	.	.	1	0.26	.	.	.	.	1	0.07	2	0.07
Inadmissibility of criminal proceedings	.	.	4	1.04	2	0.48	.	.	9	0.63	15	0.54
Incompetence	.	.	.	.	.	.	.	.	1	0.07	1	0.04
Final judgement	.	.	4	1.04	2	0.48	.	.	7	0.49	13	0.47
Immunity	.	.	.	.	.	.	.	.	1	0.07	1	0.04
Offender(s) unknown	37	9.37	50	13.05	3	0.72	1	0.61	184	12.91	275	9.87
<b>Dismissal of cases based on the principle of opportunity</b>	<b>62</b>	<b>15.7</b>	<b>106</b>	<b>27.68</b>	<b>54</b>	<b>12.95</b>	<b>18</b>	<b>10.91</b>	<b>258</b>	<b>18.11</b>	<b>498</b>	<b>17.88</b>
Reasons that are inherent in the nature of the infractions	19	4.81	27	7.05	25	6	3	1.82	95	6.67	169	6.07
Limited consequences for society	8	2.03	3	0.78	2	0.48	.	.	14	0.98	27	0.97
Situation regularised	8	2.03	23	6.01	20	4.8	1	0.61	69	4.84	121	4.34
Relational offence	.	.	.	.	.	.	.	.	2	0.14	2	0.07
Limited detriment	1	0.25	.	.	1	0.24	2	1.21	.	.	4	0.14
Reasonable term exceeded	2	0.51	1	0.26	2	0.48	.	.	10	0.7	15	0.54
Reasons that are inherent in the offender's person	25	6.33	47	12.27	16	3.84	13	7.88	112	7.86	213	7.65
Lack of precedent	11	2.78	20	5.22	3	0.72	4	2.42	23	1.61	61	2.19
Chance events with cause	8	2.03	20	5.22	2	0.48	7	4.24	20	1.4	57	2.05
Disproportion criminal proceedings – social disruption	4	1.01	7	1.83	9	2.16	2	1.21	34	2.39	56	2.01
Compensation to the victim	2	0.51	.	.	2	0.48	.	.	35	2.46	39	1.4
Policy	18	4.56	32	8.36	13	3.12	2	1.21	51	3.58	116	4.17
Insufficient investigation capacity	.	.	2	0.52	.	.	.	.	13	0.91	15	0.54
Other priorities	18	4.56	30	7.83	13	3.12	2	1.21	38	2.67	101	3.63
<b>Dismissals for other reasons</b>	<b>230</b>	<b>58.23</b>	<b>101</b>	<b>26.37</b>	<b>269</b>	<b>64.51</b>	<b>139</b>	<b>84.24</b>	<b>455</b>	<b>31.93</b>	<b>1,194</b>	<b>42.87</b>
Signalling of the offender	1	0.25	3	0.78	.	.	.	.	37	2.6	41	1.47
Praetorian probation	2	0.51	2	0.52	12	2.88	1	0.61	8	0.56	25	0.9
Administrative fine	227	57.47	96	25.07	257	61.63	138	83.64	410	28.77	1,128	40.5
<b>Total</b>	<b>395</b>	<b>100</b>	<b>383</b>	<b>100</b>	<b>417</b>	<b>100</b>	<b>165</b>	<b>100</b>	<b>1,425</b>	<b>100</b>	<b>2,785</b>	<b>100</b>

Table 42: Reasons for dismissal for environmental enforcement cases without further action, as at 10 January 2015, received in 2014, possibly through addition to a mother case, per category of charge codes - Source: database of the Board of Procurators General - statistical analysts

In previous Environmental enforcement reports, the VHRM already recommended reducing the recommendations for dismissal based on opportunistic reasons, since the Environment Enforcement Act offered in this context the possibility of an administrative fine. In addition, a decline can therefore be noted in the percentage of the dismissals for other reasons. Using the following table, the reasons for dismissal will be examined more closely. One of the reason is, after all, that the public prosecutor's office referred the file to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy (AMMC) with the purpose of imposing an administrative fine. In table 42, the motives for dismissal are shown per category of the charge codes (waste, manure, licence, emissions and environmental management) for 2014. This makes it possible, among other things, to form a picture of what types of cases are dismissed for what reasons and what influence this has on the Environment Enforcement Act.

As indicated earlier, 55% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were dismissed in 2014.

It can be concluded from the above table that 1,093 cases were dismissed for technical reasons. More than half, namely 56%, of these 1,093 cases were dismissed because there was insufficient evidence, 25% because the offenders were unknown and almost 17% because no offence had taken place.

Within the framework of the opportunity-based reasons for dismissal several reasons can be put forward. The reasons that are inherent in the nature of the breaches can for instance be the limited consequences for society, but also the fact that the situation was regularised, the detriment was too small or the reasonable term was

exceeded. In 2014, a total of 169 cases were dismissed for reasons that are inherent in the nature of the breaches, of which 121 cases were dismissed because the situation was regularised (within the short term). In addition, 213 cases were dismissed for reasons inherent in the offender's person. This may relate, among other things, to the absence of the previous reasons, chance events with cause in specific circumstances, the offender's young age, or the fact that there is a disproportion between the criminal proceedings and the social disruption, the victim's attitude or the compensation to the victim. At the same time 116 cases were dismissed as at 10 January 2015 for opportunity-based reasons related to policy. This may have to do with the limited criminal investigation capacity or the fact that other priorities were set by the public prosecutor's office. In total, 498 or 9.86% of the total number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014 were dismissed for opportunity-based reasons.

As indicated earlier, the dismissal for other reasons may relate to the referral of a case to the Environmental Enforcement, Environmental Damage and Crisis Management Division for the imposition of an administrative fine, to the Praetorian probation or to the signalling of the offender. Table 42 shows that as at 10 January 2015 no less than 1,194 cases were already dismissed for other reasons of dismissal without further action. More specifically, the table shows that 1,128 cases were dismissed in 2014 in view of the imposition of an administrative fine. This means that less than 22.34% of the total 'Environmental enforcement' cases registered by the public prosecutor's offices in 2014 were dismissed with the intention of imposing an administrative fine. Table 43 shows these figures since the implementation of the Environment Enforcement Act in 2009.

#### DISMISSED FILES

	2009	2010	2011	2012	2013	2014
Number of files dismissed for the purpose of imposing an administrative fine	299	975	1.536	1.384	1.248	1.128
% of files dismissed for the purpose of imposing an administrative fine compared to the total number of dismissed cases	23.92	27.82	43.49	45.41	46.48	40.50
% of files dismissed for the purpose of imposing an administrative fine compared to the total number of registered cases	9.89	15.31	25.6	27.56	27	22.34

**Table 43: Dismissed cases in view of the imposition of an administrative fine since the coming into force of the Environmental Enforcement Act**

From table 43, the conclusion can be drawn that the number of files that were dismissed for the purpose of imposing an administrative fine rose sharply until 2011, but then gradually declined since 2012. Percentage-wise, this decline is also seen in 2014. In 2014, slightly more than 40% of the number of dismissed files were “dismissed” with the purpose of imposing an administrative fine, while in 2013 this was still more than 46%. With regard to the total number of registered ‘Environmental enforcement’ cases in 2014, 22% were dismissed with the purpose of imposing an administrative fine, while in 2012 this was still almost 28%.

When looking at the different themes in table 42, it can be concluded that 395 cases regarding nature protection law were dismissed. The majority, 58% or 227 cases, were dismissed in view of the imposition of an administrative fine. In addition, almost 26% were dismissed for technical reasons. As for the dossiers regarding emissions it can also be concluded that about 46% of the total of 383 dismissed cases were dismissed for technical reasons. More specifically, more than 20% were dismissed because insufficient evidence was available. In total, 417 of the 999 cases regarding licences were dismissed. For dismissals in licencing dossiers it was decided in most cases to refer the offence to the AMMC in view of the imposition of an administrative fine. In fact, more than 61% of these 417 dismissed cases were dismissed in view of the imposition of an administrative fine. More than 83% of the dismissed cases regarding manure were dismissed for that reason. With regard to the theme of waste 410 or almost 29% of the cases were dismissed for that reason. Also, one-third of the dismissed cases regarding waste were dismissed because insufficient evidence was available.

Chapter 4.2 gives an evaluation of the administrative sanctions policy and indicates, among other things, how the AMMC handles the cases referred to by the public prosecutor’s offices.

## 4.2 EVALUATION OF THE SANCTIONS POLICY PURSUED BY THE ENVIRONMENTAL ENFORCEMENT, ENVIRONMENTAL DAMAGE AND CRISIS MANAGEMENT DIVISION OF THE DEPARTMENT OF ENVIRONMENT, NATURE AND ENERGY

DABM stipulates that exclusive and alternative administrative fines shall be imposed by the regional body that was assigned to that end by the Government of Flanders, namely the AMMC of the Department of Environment, Nature and Energy. In 2012, a new instrument was introduced in addition to the exclusive and alternative administrative fines, namely the administrative transaction. This administrative transaction can be regarded as some type of 'summary proceedings' or 'amicable settlement' which can be proposed by the AMMC for certain cases (with regard to both environmental offences and environmental infringements). Given the important role assigned to this division, the AMMC was also asked about its activities in the framework of environmental enforcement for the Environmental Enforcement Report 2014.

### 4.2.1 Processing of environmental offences

In the framework of the processing of environmental offences by the AMMC in 2014 it was asked how many official reports the AMMC received from each of the public prosecutor's offices between 1 January 2014 and 31 December 2014. This is reflected in table 44. In addition, a distinction can be made between the number of priority and non-priority official reports. It is the reporting officer who, based on the 'Priority Memorandum prosecution policy environment law in the Flemish Region 2013', gives this classification to his official report.

It can be deduced from the above graph that in 2014 the AMMC received a total of 1,693 official reports from the criminal divisions of the public prosecutor's offices in the Flemish Region in view of the imposition of an alternative administrative fine in 2014<sup>43</sup>.

Despite the fact that each public prosecutor's office in the Flemish Region uses the possibility of referring cases to the AMMC in view of the imposition of an alternative administrative fine, strong regional differences can be

### Official reports

	Priority official reports	Non-priority official reports	Total
Dendermonde	6	267	273
Ghent	32	333	365
Oudenaarde	3	3	6
Bruges	9	140	149
Ieper	2	17	19
Kortrijk	34	243	277
Veurne	0	54	54
Antwerp	10	70	80
Mechelen	0	25	25
Turnhout	6	147	153
Hasselt	21	41	62
Tongeren	20	36	56
Leuven	11	66	77
Brussels	1	23	24
Halle-Vilvoorde	4	69	73
Total	159	1,534	1,693

**Table 44: Official reports received by the AMMC of the Department of Environment, Nature and Energy from public prosecutor's offices in the Flemish Region in 2014**

observed in the number of referred cases. Apart from the size of the public prosecutor's office, this has to do with the fact that it continues to be the authority of the public prosecutor to decide whether or not to refer cases to the AMMC.

Table 45 not only gives the number of cases the AMMC received from the public prosecutor's offices in 2014, but also the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2014. This allows us to calculate the percentage of cases which each of the public prosecutor's offices refers to the AMMC. In this context it should be noted that not all the official reports that were recorded in 2014 by the public prosecutor's offices were actually processed in 2014. In fact, the public prosecutor's offices have a period of 180 days (can be extended once by 180 days) to refer the case to the AMMC.

<sup>43</sup> This concerns the number of official reports the AMMC received in 2014. It should be taken into account that some of these official reports were drawn up in 2013, and

possibly also in 2012, but which the public prosecutor decided in 2014 to refer to the AMMC in view of the imposition of an administrative fine.

## OFFICIAL REPORTS

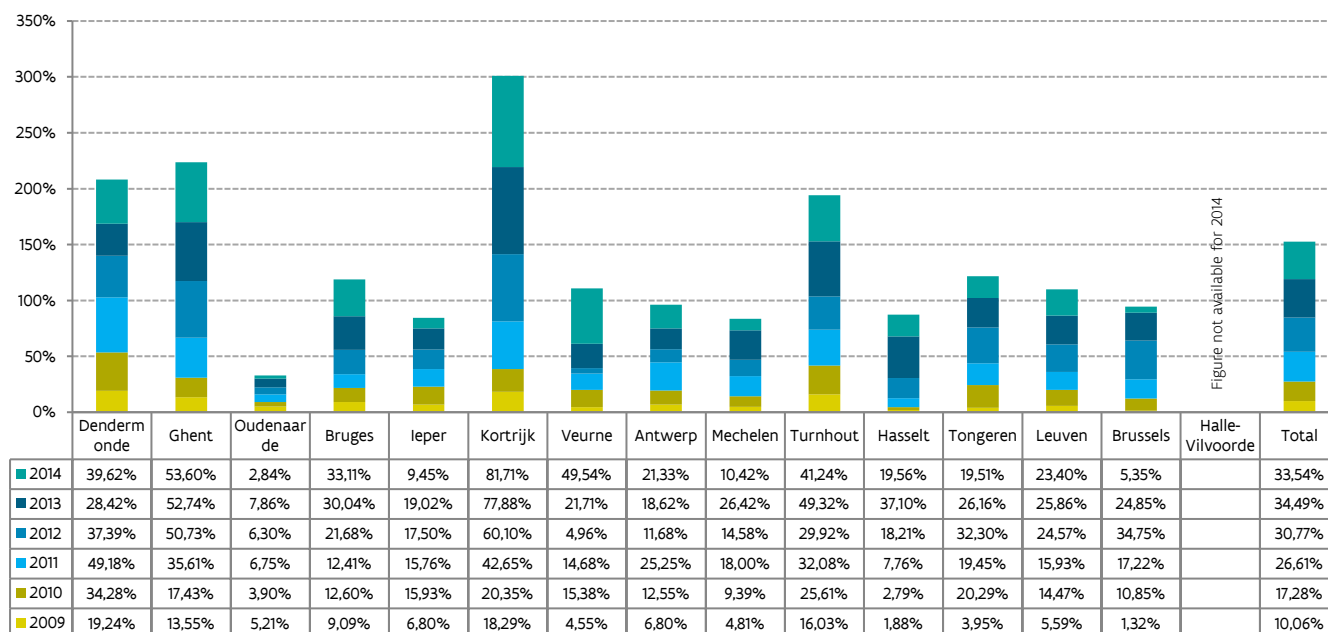
	Official reports received by the AMMC from the public prosecutor's offices	Number of environmental enforcement cases registered by the criminal divisions of the public prosecutor's office	% share of the official reports referred to the AMMC
Dendermonde	273	689	39.62%
Ghent	365	681	53.60%
Oudenaarde	6	211	2.84%
Bruges	149	450	33.11%
Ieper	19	201	9.45%
Kortrijk	277	339	81.71%
Veurne	54	109	49.54%
Antwerp	80	375	21.33%
Mechelen	25	240	10.42%
Turnhout	153	371	41.24%
Hasselt	62	317	19.56%
Tongeren	56	287	19.51%
Leuven	77	329	23.40%
Brussels	24	449	5.35%
Halle-Vilvoorde	73	/	/
Total	1,693	5,048	33.54%

**Table 45: Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2014 and referred to the AMMC**

Based on the data above, it can be concluded that the AMMC in 2014 registered on average 33.54% of the total number of Environmental enforcement cases registered by the public prosecutor's offices in 2014. If the public prosecutor's offices are viewed individually, this percentage does differ widely. However, this difference must be put into perspective. The AMMC reports, after all, which public prosecutor's office has referred the file to it. The AMMC therefore does not report on the court district in which the official report is drawn up. In the consortium of public prosecutor's office East-Flanders, various official reports from Oudenaarde were handled in Ghent and referred by Ghent. This explains why Ghent has such high figures and Oudenaarde such low ones. The same applies for Ypres and Veurne, compared to Kortrijk, and Mechelen compared to Turnhout.

Based on the previous environment enforcement reports, these figures are displayed in graph 16 per public prosecutor's office since the coming into force of the Environmental Enforcement Act.

It can generally be concluded that the percentage of the number of files that are referred to the AMMC since the Environment Enforcement Act came into operation in 2009 rose sharply until 2013. In 2014, this percentage did not increase further.



**Graph 16: Percentage share of cases referred to the AMMC since the coming into force of the Environmental Enforcement Act in 2009**

In addition, graph 16 clearly indicates that large regional differences still remain in the percentage of official reports that are referred to the AMMC. There are, for example, public prosecutor's offices that refer more than half the official reports they register to the AMMC for the purpose of imposing an administrative fine, while other public prosecutor's offices only make a limited use of this possibility. In this connection, one should refer to the perspective offered above, namely that the AMMC reports which public prosecutor's office has referred the file to it and not in which court district the official report is drawn up.

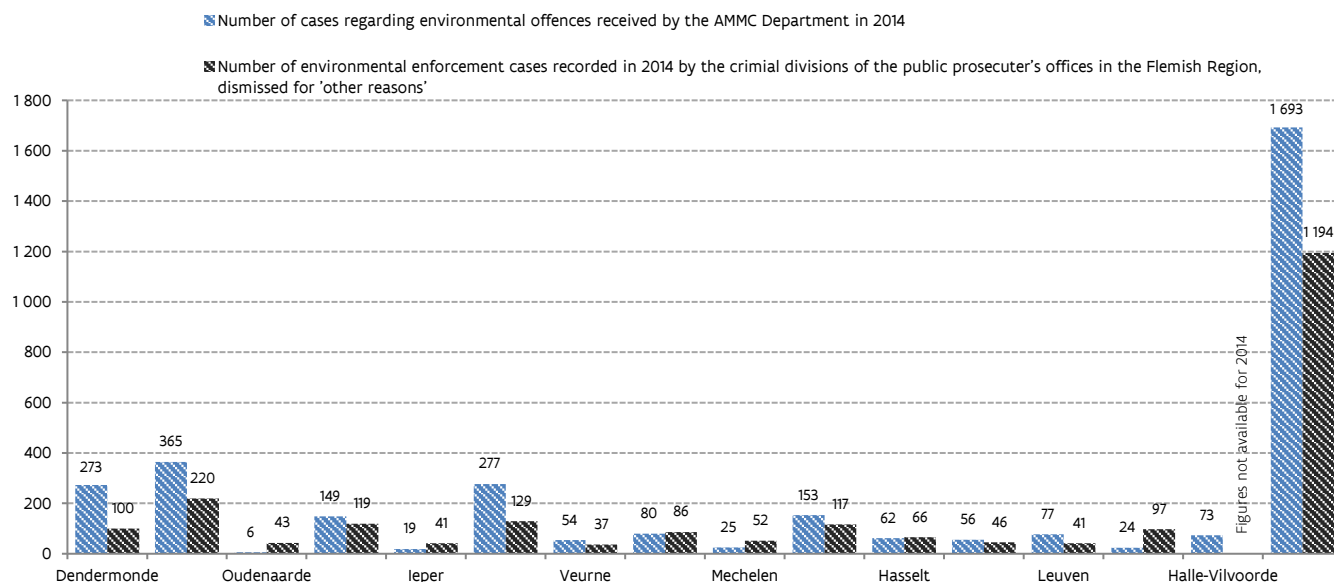
**NOTE**

The figures above referring to the number of cases submitted by the public prosecutor's offices and received by AMMC are based on the figures which the Flemish High Enforcement Council for Spatial Planning and Environment received from the AMMC. When we compare these figures to the cases recorded in 2014 that were dismissed by the public prosecutor's offices - on the basis of the figures which the VHRM received from the public prosecutor's offices - for 'other reasons' (including the referral in view of the imposition of an

administrative fine, in addition to the Praetorian probation and the signalling of the offender), a certain discrepancy may be observed. This is reflected in the following graph.

Graph 17 shows that the AMMC received 499 more cases than the number that was dismissed by the public prosecutor's offices for 'other reasons', which is already an overestimation of the number of files that were actually referred to the AMMC for the purpose of imposing an administrative fine (taking into consideration the files relating to Praetorian probation and the signalling of the offender or the files that were referred to the Manure bank for the purpose of imposing an administrative fine). . This can also be observed with the individual public prosecutor's offices of Ghent, Kortrijk, Brussels, Tongeren and Turnhout. In addition, there are also public prosecutor's offices who were reported to have dismissed more cases for 'other reasons', such as Mechelen, Leuven, Dendermonde, Oudenaarde, Bruges, leper and Veurne.

In light of this interference in data collection, the analysis of this component will be based on the figures that the Flemish High Enforcement Council for Spatial Planning and Environment received from the AMMC.



**Graph 17: Number of environmental enforcement offences received by the division AMMC and the number of environmental enforcement cases recorded in 2012 by the criminal divisions of the public prosecutor's offices in the Flemish Region, dismissed for other reasons**

## OFFICIAL REPORTS

	Priority	%	Non-priority	%	Total
AWV	3	1.88	43	2.80	46
Federal police	0	0.00	5	0.33	5
Local police	14	8.75	798	52.05	812
Municipal supervisors	8	5.00	63	4.11	71
AMI	34	21.25	202	13.18	236
ANB	62	38.75	258	16.83	320
OVAM	2	1.25	11	0.72	13
VLM	34	21.25	101	6.59	135
AMV	2	1.25	0	0.00	2
Provincial supervisors	1	0.63	1	0.07	2
Special rural constabulary	0	0.00	52	3.39	52
Total	160	100	1,533	100	1,693

**Table 46: Percentage share of the official reports received by the AMMC in 2014, per enforcement actor**

By analogy with the previous Environmental Enforcement Reports, more specific data are included with regard to the origin and theme of the cases referred to the AMMC. For instance, table 46 gives the number of cases which the AMMC received from the different enforcement bodies, namely the Agency for Roads and Traffic, the federal police, the local police, the municipal supervisors, the Environmental Inspectorate Division, the Agency for Nature and Forests, Public Waste Agency of Flanders (OVAM), Flemish Environmental Agency (VMM) and the Flemish Land Agency (VLM). The AMMC also received official reports that were drawn up by provincial supervisors and by the special rural constabulary.

Almost half of the official reports which the AMMC received in 2014 were drawn up by the local police. In absolute figures it concerned 812 official reports, or almost 48% of the total amount of official reports received. In addition, it is clear from table 46 that almost one-fifth of the received official reports were drawn up by the Agency for Nature and Forests and almost 14% by AMI supervisors.

Table 47 gives an overview of the topics of the cases which the AMMC received in 2014. Here, the same themes are used as those in the evaluation of the sanctions policy pursued by the public prosecutor's offices.

## OFFICIAL REPORTS

	Priority	%	Non-priority	%	Total
Natural protection law	65	40.88	342	22.31	65
Emissions	15	9.43	250	16.31	15
Licences	27	16.98	197	12.85	27
Manure	34	21.38	109	7.11	34
Waste	18	11.32	635	41.42	18
Total	159	100	1,533	100	159

**Table 47: Percentage share of official reports received by the AMMC in 2014, per environmental theme**

Almost 39% of the cases referred to waste. This is not surprising. As indicated in the previous section, no less than 47% of the total number of cases recorded by public prosecutor's offices in 2014 had a waste-related charge code.

In addition, it can be concluded that almost one-fourth of the cases received by the AMMC in 2014 related to nature protection.

Table 48 gives an overview of the number and type of decisions taken by the AMMC in 2014 within the framework of the alternative administrative fine. As mentioned earlier, since September 2014, the AMMC has the option to propose an administrative transaction for certain environmental offences. This administrative transaction can be regarded as a form of administrative amicable settlement. As a result, the procedure for the imposition of a fine lapses when the proposed amount is paid. However, when the offender refuses the proposal of an administrative transaction, the AMMC will resume the procedure for the imposition of an alternative administrative fine. The VHRM has thus also asked the AMMC, as it did in 2013, to indicate how many such administrative transactions were proposed in 2014.

Table 48 presents the data for 2014 as well as the decisions taken by the AMMC in the framework of the alternative administrative fine since the entry into effect of the Environmental Enforcement Act.



## ADMINISTRATIVE FINES

	2009	2010	2011	2012	2013	2014
Official reports received by AMMC from the public prosecutor's offices	304	1.100	1.597	1.545	1.594	1.693
Handling/settling files in the context of alternative administrative fine	5	219	378	1.442	1.543	1.737
Ruling did not imply a fine	0	6	40	402	258	231
Ruling implied a fine	0	151	279	1.040	966	848
(Proposed and) paid administrative transaction	/	/	/	7	311 <sup>45</sup>	658 <sup>46</sup>
The official report did not fall under the scope of Chapter XVI of the DABM.	5	62	59	0	8	0

**Table 48: Decisions taken by the AMMC in the context of alternative administrative fines**

To clarify the above data, the following remarks stated by the AMMC should be taken into consideration:

- ▶ the 848 rulings involving a fine also include the fines that were imposed after no heed was paid to the administrative transaction proposal from 2013; the 658 administrative transactions are all administrative transactions proposed in 2013 (606) and all those administrative transactions paid in 2014 but proposed in 2013 (52). The AMMC reported differently in 2014 than it did in 2013, when only the number of administrative transactions paid was reported of the number that was proposed in 2013 (311). This means the figures cannot be compared with each other.

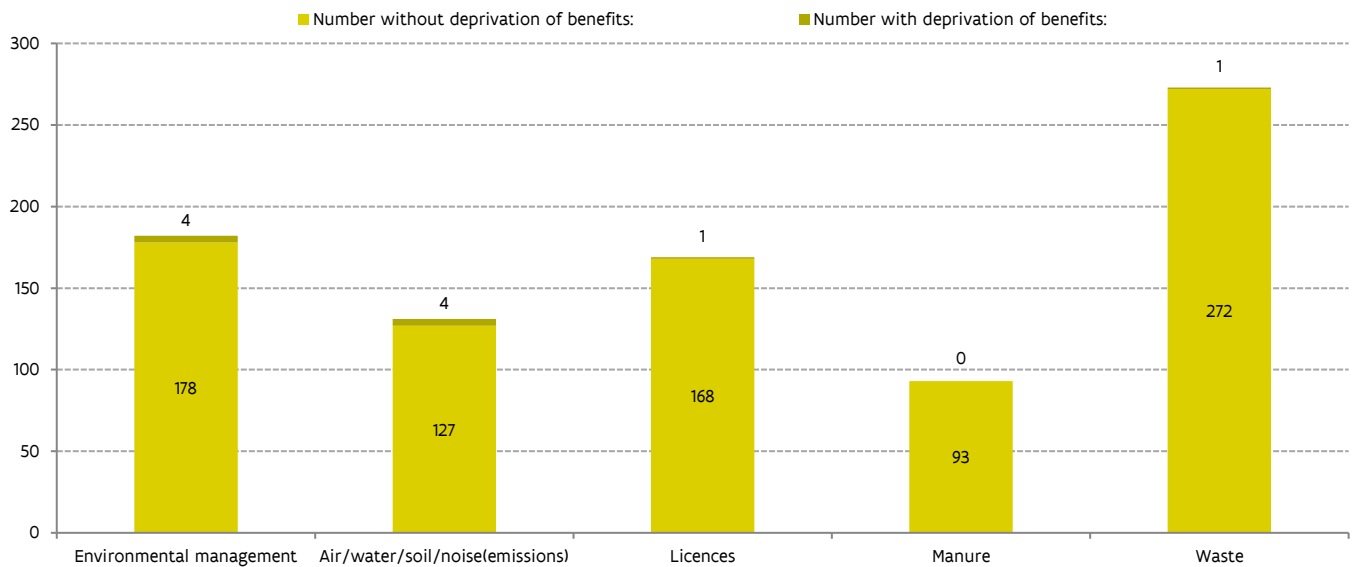
For 2014, it can be concluded that the AMMC has taken a decision in 1,737 files, while the AMMC received 1,693 files in 2014. This means that more files were dealt with than were received. 848 alternative administrative fines were imposed. In 231 files, it was decided not to impose a fine. In addition, 606 administrative transactions were proposed and 52 administrative transactions dating from 2013 were paid in 2014.

In general, since the introduction of the Environmental Enforcement Act in May 2009, the AMMC has received no less than 7,833 official reports from the public prosecutor's. Between 1 May 2009 and 31 December 2014, the AMMC reached a decision in 68% of these 7,833 cases. During this period 3,284 alternative administrative fines were imposed. In addition, it was decided not to impose a fine in 937 cases. Also, it was concluded in 134 cases that the official report did not fall within the scope of the Environmental Enforcement Act.

Graph 18 presents the framework within which an alternative administrative fine was imposed in 2014, whether or not accompanied by a deprivation of benefits.

<sup>44</sup> Paid administrative transactions in 2013.

<sup>45</sup> 52 paid administrative transactions on proposals from 2013 and 606 proposals to administrative transactions made in 2014.



**Graph 18: Framework within which an alternative administrative fine was imposed by the AMMC, with and without a deprivation of benefits**

Graph 18 indicates that in 10 of the total of 848 alternative administrative fines imposed in 2014, a deprivation of benefits was imposed. Of the 178 fine rulings concerning environmental management, 4 alternative fines were coupled with a deprivation of benefits. For fines in the area of emissions, 4 of the 127 fines were coupled to a deprivation of benefits. In addition it can be stated that in 32% of the fine decisions taken in 2014, the official report was related to waste. Around 21% related to environmental management. Graph 18 also confirms that more than 15% of the alternative fines imposed in 2014 related to emissions and nearly 11% to manure.

In table 49, the framework within which the administration transactions are proposed<sup>46</sup> in 2014 and the framework in which the administrative transactions were paid<sup>47</sup> in 2014 is shown.

### IDENTIFICATION REPORTS

ADMINISTRATIVE TRANSACTIONS	Framework within with an administrative transaction was proposed in 2014	Framework within the administrative transaction was paid in 2014
Nature protection	205	156
Air/water/soil/noise (emissions)	9	5
Licences	10	7
Manure	46	39
Waste	336	229

**Table 49: Framework within which an administrative transaction was proposed and paid, per environmental theme**

Table 49 indicates that in 2014 the AMMC proposed a total of 606 administrative transactions. In more than half of these proposals, namely 55%, the file related to waste, and in 34% of the proposals the file related to environmental management, in particular fishery and access to forests.

In addition, based on the table, it can be concluded that in 2014 a total of 436 proposals to payment in the context of the procedure for administrative transactions was accepted. The AMMC formulated a number of these proposals in 2013 (20%) and a number in 2014 (80%).

<sup>46</sup> This concerns the files for which the decision was made in 2014 to offer a proposal of a fine to the offender. All these files cannot, strictly speaking, be considered fully settled, since for a number of them (around 145) the term of payment had not yet lapsed in 2014. This total was, however, added to the total

of the decisions that the AMMC took in 2014 in the framework of the procedure for the alternative administrative fines.

<sup>47</sup> These are files in which previously a proposal of payment of a fine was made (20% proposals in 2013 (52) and 80% in 2014) and which the offender has paid the amount fully and in time, so that the file was completely settled in 2014.

## 4.2.2 Processing of environmental infringements

The Government of Flanders included annexes with the Environmental Enforcement Decree containing an exhaustive list of environmental infringements. These environmental infringements were decriminalised. As mentioned earlier, when an environmental infringement is identified, the supervisor can draw up an identification report. This identification report is sent immediately to the regional body, which is the AMMC. After receiving the identification report, the AMMC can, within a period of 60 days, inform the suspected offender of its intention to impose an exclusive administrative fine (possibly accompanied by a deprivation of benefits). Within a period of 90 days from this notification of its intention, the AMMC has to decide on the imposition of an exclusive administrative fine, possibly accompanied by a deprivation of benefits. The suspected offender must be informed of this decision within ten days.

The AMMC was therefore asked about the number of identification reports it received in 2014, about whether these were drawn up by municipal, provincial, regional or police district supervisors, and about the context in which these identification reports were drawn up and fined.

It was communicated by the AMMC that in 2014 it received a total of 50 identification reports within the framework of identified environmental infringements. 39 identification reports were all drawn up by regional supervisors, namely 19 identification reports by supervisors of the AMI, 14 by supervisors of the Agency for Nature and Forests and 6 by supervisors of the Public Waste Agency of Flanders. In addition, 3 identification reports were drawn up by municipal supervisors and 8 by Local Police supervisors.

The section 'Evaluation of the instrument 'identification report'' reports on the use of this instrument by the supervisors. For this reason the different supervisors were asked how many identification reports they drew up in 2014. These numbers differ greatly from the numbers which the AMMC indicates having received in 2014. The responding municipal supervisors indicated having drawn up a total of 14 identification reports, whereas the AMMC received but 3 identification reports from this actor in 2014. It can also be concluded that the responding regional supervisors drew up 37

identification reports in 2014, while the AMMC received 39 such reports.

The AMMC was asked to indicate in what framework identification reports were drawn up in 2014. This is reflected in table 50

### IDENTIFICATION REPORTS

FRAME WITHIN THE IDENTIFICATION REPORTS WERE RECEIVED	Number
Company-internal environmental care	0
Environmental impact and safety reporting	0
Soil protection and remediation	4
Noise research laboratories	9
Groundwater management laboratories	0
Water analysis laboratories	0
Environmental Licensing Act	20
Waste prevention and management	3
Maintenance and inspection of burners	0
Certification of refrigeration companies	0
Fire protection systems	0
Flemish Parliament Act on Forests	8
Nature protection	1
Flemish Parliament Act on Hunting	5
Fishing	0
Ozone-depleting substances	0
Flemish Parliament Act on Surface Minerals	0
Fluorinated greenhouse gases	0
REACH	0

**Table 50: Identification reports received by the AMMC per subject, in 2014**

Table 50 indicates that 40% of the total number of identification reports dealt with the Environmental Licensing Act (sectoral provisions concerning environmental hygiene). In addition, 18% related to breaches involving sound and 14 files related to environmental management.

## EXCLUSIVE ADMINISTRATIVE FINES

	2009	2010	2011	2012	2013	2014
Identification reports received by AMMC	18	38	18	47	89	50
Ruling made in the context of Exclusive administrative fine	4	13	36	52	65	31
Ruling did not imply a fine	1	0	2	3	0	4
Ruling implied a fine	3	5	32	49	54	20
(Proposed and) paid administrative transaction	/	/	/	0	11	74 <sup>48</sup>
The identification report did not fall under the scope of Chapter XVI of the DABM.	0	8	2	0	0	0

**Table 51: Decisions taken by the AMMC in the context of exclusive administrative fines**

The AMMC was asked to indicate which decisions were taken in 2014 with respect to the received identification reports. Table 51 gives an overview of the decisions regarding fines taken in 2014 within the framework of the exclusive administrative fine. On the basis of the data from previous environmental enforcement reports an overview can be given of the decisions taken by the AMMC within the framework of exclusive administrative fines and the identification reports since the coming into action of the Environmental Enforcement Act. A more accurate overview can also be provided of how environmental infringements are processed by the AMMC. This comparison is presented in table 51.

Table 51 shows that in 2014 the AMMC took 31 decisions in the framework of identified environmental infringements. In almost 65% of these decisions an exclusive administrative fine was not imposed. Of the 20 exclusive administrative fines that were imposed in 2014, only one was coupled with a deprivation of benefits. With regard to the framework in which the fines were imposed, it can be indicated that 35 of the fines related to sound. Furthermore, six files related to waste prevention and management, three files to the Hunting Act, two files to the sectoral provisions concerning environmental hygiene (Environmental Licensing Act) and one file related to soil protection and purification. In 2014, five proposals for administrative transactions were made compared to four files concerning waste prevention and management and compared to one file concerning soil protection and purification.

Since the entry into effect of the Environmental Enforcement Act in May 2009 until 31 December 2014, the AMMC received a total of 260 identification reports. A decision was already reached within that period for 77% of these cases. In 163 cases an exclusive administrative fine was imposed and in 10 cases it was decided not to impose an administrative fine. In addition, it was concluded in 10 cases that the identification report did not fall within the scope of the Environmental Enforcement Act.

<sup>48</sup> This includes all those proposed in 2014 (5) and paid in 2014 under a proposal made in 2013 (2).

## 4.3 EVALUATION OF THE ADMINISTRATION OF JUSTICE BY THE ENVIRONMENTAL ENFORCEMENT COURT

The Milieuhandhavingscollege or MHC (Environmental Enforcement Court) is an administrative court that was created by virtue of Article 16.4.19 of DABM. It passes judgement in appeals against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management Division to impose alternative or exclusive administrative fines.

The Environmental Enforcement Court was also surveyed by the VHRM about its activities in 2014. It was asked about the number of appeals against decisions of the AMMC it had received in the framework of both environmental offences and environmental infringements in 2014. Another question was how these appeals were processed. Table 52 shows the activities of the Environmental Enforcement Court in 2014 with regard to the appeals lodged against decisions of the AMMC.

In the previous section it was indicated that the AMMC imposed 848 alternative administrative fines in 2014. It can be deduced from the above table that the Environmental Enforcement Court received 102 appeals against decisions of the AMMC regarding the imposed alternative administrative fines in 2014. This means that an appeal was lodged against at least 12% of the decisions of the AMMC. This percentage may be higher since the offender has 30 days to lodge an appeal with the Environmental Enforcement Court, starting from the day following notification of the decision of the AMMC. This means that an appeal may still have been lodged against decisions taken by the AMMC during the last thirty days of 2014. This may in turn be cancelled out by the fact that the appeals received in 2014 can also refer to decisions taken in the last thirty days of 2013.

### APPEALS

	Environmental offences	Environmental breaches	Total
Received in 2014	102	8	110
	(98 registered, 4 non-regularised)	(6 registered, 2 non-regularised)	(104 registered, 6 non-regularised)
Arrests	Environmental offences	Environmental breaches	Total
Appeal inadmissible (after simplified procedure)	10	-	10
Appeal unfounded, fine confirmed	18	2	20
Appeal unfounded, judgement AMMC vacated ex officio	1	-	1
Appeal completely or partially well-founded, with reduction of fine	37	2	39
Appeal completely or partially well-founded, with cancellation of fine	-	-	-
Appeal completely or partially well-founded, judgement AMMC vacated out of hand	10	1	11
Granting waiving appeal	1	-	1
Appeal devoid of purpose	4	-	4
Interlocutory ruling concerning rejecting late defence	3	-	3
Interlocutory ruling concerning transition for simplified to normal procedure	2	-	2
Interlocutory ruling concerning reopening debate	-	-	-
<b>Total</b>	<b>86</b>	<b>5</b>	<b>91</b>

Table 52: Appeals received against decisions of the AMMC in the context of environmental offences and environmental infringements by the Environmental Enforcement Court in 2014 and the results of the processing thereof

In comparison with 2012 and 2013 it can be observed that the percentage of appeals against decisions of the AMMC in the context of alternative administrative fines increased slightly. This ratio was 8% in the Environmental Enforcement Report 2012 and 10% in 2013. If we look at the period since the introduction of the Environmental Enforcement Court up to and including 2014, an appeal percentage of nearly 10% can be identified since a total of 315 appeals were lodged with the Environmental Enforcement Court and the AMMC in that period imposed a total of 3,284 alternative administrative fines.

Table 52 indicates, among other things, that the Environmental Enforcement Court registered 102 appeals in 2014 and in 2014 a total of 86 judgments were delivered. Of the total number of appeals that were lodged against imposed alternative administrative fines, 10% were declared inadmissible, 18% were declared unfounded, which means that the fine imposed by the AMMC was confirmed, and 46% were declared partially or entirely well-founded with a reduced fine as a result.

In total, the Environmental Enforcement Court received, since its commencement of operations and up to and including 2014, 315 appeals pertaining to alternative administrative fines imposed by the AMMC and in this same period, 257 (interim) decisions were taken, which represents nearly 82%.

Within the framework of the exclusive administrative fines imposed by the AMMC in 2014, the above table shows an appeal rate of at least 40%. It was indeed indicated in the previous section that in 2014 the AMMC imposed 20 exclusive administrative fines, whereas the Environmental Enforcement Court received 8 appeals in 2014 in the context of exclusive administrative fines. This percentage of the appeal rate may be a bit higher since the offender has a term of 30 days, starting from the day following the notification of the AMMC's decision, to lodge an appeal with the Environmental Enforcement Court. This means that an appeal may still have been lodged against decisions taken by the AMMC during the last thirty days of 2014. This is in turn perhaps cancelled out by the fact that the appeals received in 2014 also relate to decisions taken in the last thirty days of 2013.

The Environmental Enforcement Report 2012 indicates that the Environmental Enforcement Court received 9 appeals in 2011 against AMMC decisions about environmental infringements. In 2012, the AMMC imposed 49 exclusive administrative fines. As a result, the appeal

rate was 18.36% in 2012. In 2013, 54 exclusive administrative fines were imposed by the AMMC and two appeals were lodged with the Environmental Enforcement Court, which suggests an appeal ratio of nearly 4%. If we look at the period since the introduction of the Environmental Enforcement Court up to and including 2014, an appeal percentage of more than 15% can be identified since a total of 25 appeals were lodged with the Environmental Enforcement Court and the AMMC in that period imposed a total of 163 alternative administrative fines.

The above table shows, among other things, that the Environmental Enforcement Court received 8 appeals against imposed exclusive administrative fines in 2014 and actually reached 5 decisions in 2014. Two appeals were declared unfounded, which means that the fine as imposed by the AMMC was confirmed, and three appeals were declared partially or entirely well-founded with a reduced fine as a result.

In total, the Environmental Enforcement Court received, since its commencement of operations and up to and including 2014, 25 appeals pertaining to exclusive administrative fines imposed by the AMMC and in this same period, 19 (interim) decisions were taken, which represents nearly 76% of the total number of appeals.

## 4.4 EVALUATION OF THE SANCTIONS POLICY PURSUED BY THE FLEMISH LAND AGENCY

Not only the Environmental Enforcement, Environmental Damage and Crisis Management Division can impose administrative fines. The Flemish Land Agency (Vlaamse Landmaatschappij or VLM) was authorised to impose administrative fines already with the coming into force of the Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution (generally known as the Flemish Parliament Act on Manure).

In its Article 63, the Flemish Parliament Act on Manure provides an exhaustive list of infringements for which administrative fines can be imposed by the VLM. The said article also defines the calculation of the amounts of the fines. Article 71 of the aforementioned Flemish Parliament Act stipulates for which infringements an official report has to be drawn up.

Administrative fines can be imposed in relation to the following infringements: nitrogen and phosphate balance; overfertilisation of plots; more animals than nutrient emission rights; unproven manure sales; notification and cancellation of shipments; late notification of shipments; shipments without proof of dispatch or presentation of an agreement with the neighbours; failure to establish or notify an agreement with the neighbours; shipments without a correct and complete manure sales document; failure to comply with the notification obligation; erroneous notification; failure to keep a register; nutrient balances not available for inspection; shipment without mandatory documents; refusal to use Sanitel; failure to use or incorrect use of AGR-GPS; manure processing obligation and processing of 25% NER; manure excretion balances: available for inspection and on notification; shipment by recognised shippers: notification or cancellation; shipment by recognised shippers: no shipping document; nitrate residue in high-risk area: exceedance; nitrate residue in high-risk area: refusal of sampling and nitrate residue (both in and outside high-risk area): cultivation plan and

fertilisation plan/register: not or not correctly performing the nitrate residue provisions or non-compliance with the measures imposed; carrying out an arrangement with the neighbours whereby the pulling vehicle is not the property of the provider or customer of the manure; and carrying out an arrangement with

the neighbours without registering the shipment in time at the Manure bank.

The Flemish Land Agency (VLM) was therefore not only asked about the number of environmental enforcement inspections carried out in 2014 and the measures taken following these inspections, as described in Chapters 2 and 3, but also about the number of administrative fines imposed by the VLM in the framework of the inspection reports drawn up by it and about the type of infringements these referred to.

Table 53 shows the number of field identifications and the number of administrative fines imposed by the VLM in 2014.

Table 53 shows that in 2014 the Flemish Land Agency (VLM) imposed 3,272 fines following 120 field identifications. The difference between the number of infringements identified in the field and the number of imposed fines originates from the term for the imposition of the fines. A fine was not always imposed in 2014 for all the identifications that were made in 2014. The fines imposed in 2014 may still relate to breaches that were identified during previous years. On the other hand, it is possible that breaches that were identified in 2014 were not fined until 2015. Moreover, the fines imposed in 2014 originate from breaches identified in the field, as well as from administrative inspections. This means that some of the fines were imposed administratively following the inspection of the database and that these are not reflected in the number of field identifications either.

The above table indicates, among other things, that 43% of the total number of imposed fines were imposed due to the fact that more animals were kept than nutrient emission rights were available, 28% due to failure to comply with the notification obligation and 13.53% of the administrative fines were imposed in the context of the nitrogen and phosphate balances.

## ADMINISTRATIVE FINES AND FIELD IDENTIFICATIONS IMPOSED BY THE VLM

	Number of field identifications	Number of administrative fines
<b>ADMINISTRATIVE FINES IMPOSED BY THE VLM IN KEEPING WITH THE PROVISIONS INCLUDED IN THE FLEMISH PARLIAMENT ACT ON MANURE</b>	120	3,272
the balance nitrogen and phosphate	4	443
overfertilisation of a plot	18	3
more animals than nutrient emission rights (NER-D)	2	1,398
unproven manure sales	1	0
an administrative fine concerning the notification and cancellation of shipments	6	6
late notification of shipments	2	0
shipments without proof of dispatch or presentation of an agreement with the neighbours	5	11
failure to establish or notify an agreement with the neighbours	16	14
shipments without a correct and complete manure sales document	38	41
failure to comply with the notification obligation	0	928
erroneous notification	9	14
failure to keep a register	1	2
nutrient balances not available for inspection	0	0
shipment without mandatory documents	5	2
refusal to use Sanitel	0	0
failure to use or incorrect use of AGR-GPS	13	61
manure processing obligation and processing of 25% NER	0	345
manure excretion balances	0	4
shipment by recognised shippers (notification or cancellation)	0	0
shipment by recognised shippers (no shipping document)	0	0
exceedance of the nitrate residue in high-risk area	0	0
refusal of sampling and nitrate residue in high-risk area	0	0
cultivation plan and fertilisation plan/register for nitrate residue (both in and outside high-risk area)	0	0
Not or not correctly performing the nitrate residue provisions or non-compliance with the measures imposed	0	280
Carrying out an arrangement with the neighbours whereby the pulling vehicle is not the property of the provider or customer of the manure	0	0
Carrying out an arrangement with the neighbours without registering the shipment in time at the Manure bank	/	1

Table 53: Number and nature of the administrative fines imposed by the Flemish Land Agency



## 5 CONCLUSIONS AND RECOMMENDATIONS

### 5.1 EFFORTS

With regard to the **regional** environmental enforcement actors it could be concluded in the second chapter that 711 regional supervisors were appointed in 2014 by 10 regional bodies. This is a decrease of 11 supervisors compared to 2013 when 722 supervisors were appointed. The decline in the number of supervisors is largely due to the lack of figures supplied from the regional actor, compared to previous years we see a general increase in appointed supervisors, a positive evolution.

In comparison with 2012 and 2013, the total deployed FTE spent on environmental enforcement tasks has increased. This is related to the increase of the deployed FTE at the Environmental Inspectorate Division.

Account should be taken of the fact that the various regional and local actors differ greatly in terms of authority, capacity and organisation. Therefore, the figures that give an average in this report should always be interpreted with caution.

When looking at the **police - local and federal**, as environmental enforcement actor, it can be concluded that this actor drew up no less than 15,685 official reports in 2014 in the context of environmental enforcement. 97.5% of these official reports were drawn up by the local police and less than 2.25% by the federal police. This ratio, as well as the types of breaches for which an official report was drawn up in 2014, is similar to that of 2013. In comparison with the data from the Environmental enforcement report 2013, a rise is discernible in the number of official reports drawn up, namely 15,161 in 2013, but a decline compared to 2012 when, in total 17,482 official reports were drawn up. The ratio between the unit issuing the citation (Federal police, local police and other police divisions) does, however, remain more or less equal, just as the relationship between the various types of facts. In addition to the reactive inspections stated above, the Federal police also carried out in 2014, in the context of

the National Safety Plan 2012-2015, 531 proactive inspections relating to waste shipments on the territory of the Flemish Region

The present environmental enforcement report as well zooms in on the specific activities of the supervisors who are appointed with the **local police**. 97 of all 117 police districts in the Flemish Region responded to the VHRM questionnaire<sup>49</sup>. This is a response level of nearly 83%. This is an increase in the response level compared to the Environmental enforcement report 2013 and the Environmental enforcement report 2012, where the figures were 81% and 78% respectively. 32 of the 92 police areas that replied had a supervisor at their disposal. This is a slight decline compared to 2012, when nearly 36% of the police areas responding could involve a supervisor, but an increase compared to 2012, when 28.5% could involve a supervisor.

With regard to the activities of **provincial governors and mayors** in the context of the imposition of administrative measures and safety measures it can be concluded that none of the provincial governors used their authority to impose administrative or safety measures in 2014. In 2011, an administrative measure was imposed once by one of the provincial governors.

The responding mayors, on the other hand, indicated having imposed a total of 166 administrative measures at their own initiative or following a request or petition. This is a decrease compared to 2013 when 199 administrative measures were imposed by the mayors. The majority of the administrative measures, namely almost 63%, were regularisation orders. These findings are similar to the findings in the Environmental enforcement report 2013, in which a summary was given of the appropriate figures in the previous years. It shows that for the period 2010-2013 it can be concluded that the majority of the administrative measures, namely 61%, were orders to regularisation. In 18% of the cases,

<sup>49</sup> In previous environmental enforcement reports, 118 police areas were mentioned. However, two police areas merged in 2012.

it was a prohibition order. The administrative measure that was deployed least – namely in only 4% of the cases – was administrative coercion. A combined set of administrative measures was imposed in 17% of the total administrative measures imposed in the period 2010-2013. Similarly 11% of the administrative measures imposed in this period were not implemented in the imposed period.

It can be concluded that the trends in the performance of enforcement duties by mayors and provincial governors do not differ substantially from 2013.

In the context of the inquiry for this environmental enforcement report, the VHRM received a reply from the five provinces concerning the provincial supervisors and their activities in 2014. Only the province of Antwerp could make use of provincial supervisors, more specifically of 7 provincial supervisors. In total, 0.2 FTE was spent on environment enforcement tasks pursuant to the Environment Enforcement Act. In 2014, one environmental enforcement inspection was performed in the province of Antwerp, and this in response to a complaint or report. Apart from the duties of the provinces under the Environmental Enforcement Act, their responsibilities as watercourse managers were also reported on. Within this framework the province also has a supervisory duty on the basis of legislation that was not included in Title XVI of the Environmental Enforcement Act. A total of 35 provincial staff members were appointed in the provinces to perform this duty.

For the analysis of the efforts of the municipal supervisors the VHRM could count on a response rate of 78%, which is 240 of the 308 municipalities. The response of the Flemish cities and municipalities has continually increased in recent years. In 2013, this was, after all, 74%, in 2012 73% and in 2011 64%. Within the municipalities that, in 2014, had in total 253 municipal supervisors at their disposal, a total of 63.05 FTE was dedicated to environmental enforcement duties. The average time spent per municipal supervisor on environmental enforcement duties – here the FTE dedicated to administrative support is included – was in 2014 just below 0.25FTE.

With regard to municipal supervisors it should be concluded that there is no uniform picture. In some municipalities the supervisors have been appointed for appearance's sake, since it was reported that no time was dedicated to environmental enforcement duties in 2014. However, other municipalities and cities have a

number of supervisors at their disposal who dedicated a number of FTEs to environmental enforcement duties and who thus carried out a decent number of environmental enforcement inspections. In total, the municipal supervisors jointly carried out 4,462 environmental enforcement inspections in 2014 (4,657 in 2013).

Chapter 2 of the present environmental enforcement report also reports on the activities of supervisors appointed within four intermunicipal associations that are active in the field of environmental enforcement. The Environment Enforcement Act provided the possibility of organising local supervision within an intermunicipal association. The underlying motivation for this was that the municipalities could achieve an efficiency gain by appointing a supervisor who could operate on the territory of all affiliated municipalities. Based on the figures it can be concluded that the possibility of appointing intermunicipal supervisors was not used very much in 2014.

The Environmental Enforcement Report provides figures on the number of nuisance-causing plants on the territory of the municipalities. The municipalities were also asked to indicate how many **category 1, 2 and 3** plants were present on their territory. In total, these numbers amounted to respectively 18,601, 50,824 and 123,576.

## 5.2 INSTRUMENTS

The third chapter of the present Environmental Enforcement Report 2014 discussed the use of the separate environmental enforcement instruments in 2014.

A first important relevant conclusion is the fact that during 73% of the total of 36,921 performed environmental enforcement inspections **no breach** of an environmental regulation was identified. A breach was identified during 27% of the inspections. Considering the mutual variety between the nature of the inspections and the actors who carry them out, it is difficult to interpret this general figure. Certain actors require several inspections in order to identify a breach. For certain actors, there is no one-on-one relationship between inspections carried out and the identification of breaches. With this qualification in the back of the mind, a number of factors can be linked with the increased percentage of inspections without identified breaches. A possible connection exists in an increased level of compliance or a lack of risk-driven approach and targeted supervision.

In more than 9% of the total of 9,905 inspections where a breach was identified, no further action was undertaken with regard to the breach identified. This is a considerable drop compared to the data of the Environmental enforcement report 2012 and 2013, where 22% and 15% respectively of the inspections where a breach was identified resulted in no action being taken with regards to the breach identified.

For only 5% of the 36,921 environmental enforcement inspections performed in 2014, the result was unknown. This is a decline in comparison with 2013 and 2012, when this percentage was 11.5% and 9% respectively.

In 2014, a total of 1,895 recommendations were formulated by the different supervisors for a total of 26,892 inspections during which no breach was identified. This is an application rate of 7%. In 2013, this percentage was 11.5% (in total 2,789 exhortations) and in 2012 12.5% (in total 2,922 exhortations). The regional supervisory bodies apply the instrument of recommendation significantly less than the municipal supervisors and the supervisors of the local police.

The instrument of exhortation was a much-used instrument in 2014. An exhortation was made in nearly

half of all inspections where a breach was identified. There were, after all, a total of 4,635 exhortations made in 2014 during 9,905 inspections where a breach was identified. This is on average a percentage share of 47%. In 2012 and 2013, this percentage was 31% and 30% respectively. This points to an increase in the percentage of exhortations compared to the total number of inspections where a breach was identified.

In general, in comparison with the other instruments, it can be concluded that the identification report was not used very frequently. A total of 59 identification reports were drawn up. This is a decline compared to the 77 identification reports that were drawn up in 2012 by the supervisory bodies and the 110 identification reports that were drawn up in 2013. However, the percentage of the total number of inspections where a breach was identified in which this instrument was used does not differ much from previous years. In 2012, this figure was also 0.60% and in 2013 this was 0.80%.

In 2,796 of the total of 9,905 inspections where a breach was identified, an official report was drawn up in 2014. This is a percentage of 28%. In comparison with 2013 and 2012, an increase in the number of inspections whereby an official report was drawn up can be seen, both in absolute numbers and in percentages with regard to the number of inspections where a breach was identified. In 2012, the number of official reports was 2,254 in a total of 13,313 inspections where a breach was identified, which implies a percentage of 17%. In 2013, 14,319 inspections were performed and 2,418 official reports were drawn up, which again represents 17%. It can be noted that the number of inspections where a breach is identified has decreased in 2014, but that the use of the instrument of the official report has risen. This means that an increasing number of breaches were cited in 2014 with an official report, namely during more than ¼ of all inspections where a breach was identified.

In 2014, a total of 447 administrative measures were imposed by the supervisors. This is a decline compared to the 626 administrative measures imposed in 2013 and the 624 administrative measures imposed in 2012. Percentage-wise, compared to the number of inspections where a breach is identified, the number of administrative measures imposed remains more or less the same. In 2012, this percentage was 4.68%, in 2013

4.37% and in 2014 4.45%. This is because not only the number of administrative measures imposed in 2014 declined, but also the number of inspections whereby a breach was identified.

In 2014, 60 appeals were lodged with the minister against decisions containing administrative measures. This is an increase compared to the 38 appeals that were lodged in both 2012 and 2013. Conversely, it could be concluded that the number of administrative measures imposed decreased in 2014. In 2012 and in 2013, 624 and 626 administrative measures were imposed respectively, while in 2014 this total dropped to 447. This means that the level of appeal against administrative measures in 2014 was around 13.5%, while in 2012 and 2013 this was only 6%. Of the 60 submitted appeals in 2014, 21 files were related to environmental hygiene and 39 to environmental management. The majority, namely 33%, were dismissed in 2014, while 27% were partially upheld and 31% fully upheld in 2014. In addition, 9% of the admissible appeals were declared devoid of purpose.<sup>51</sup> This ratio is slightly different than in 2012 and 2013 when 69% and 47% respectively of the total appeals were dismissed, 15% and 13% partly upheld, and 15% and 8% fully upheld. The conclusion could be drawn from this that not only more appeals were lodged, but also that an increasing number of appeals were upheld or partly upheld.

In 2014, a total of 97 safety measures were imposed by the supervisors. This is a rise compared to the 78 safety measures that were imposed in 2012, but a decline with regard to the 126 safety measures that were imposed in 2013.

## 5.3 IMPOSITION OF SANCTIONS

The fourth chapter focused on the imposition of criminal and administrative sanctions. It could be concluded, for instance, that the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 5,048 environmental enforcement cases in 2014, of which 63% - or 3,187 cases – came from the general police and 33% - or 1,678 cases – came from the inspection departments.

More than 47% of the total number of Environmental enforcement cases registered by the criminal departments of the public prosecutor's offices of the Flemish Region in 2014 had a charge code within the area of waste. This covers 2,402 files. Cases in connection with emissions and environment management law represented about 14% of the total number of cases in 2014, or 676 and 739 files respectively. In addition, 999 cases, nearly 20%, related to licences and 232 cases, almost 5% of the total number of Environmental enforcement cases, related in 2014 to manure.

The trend that could be observed in the previous environmental enforcement report can also be confirmed in the present environmental enforcement report. Almost 1,800 cases pertained to **illegal dumping**. As a result, a substantial part of the total number of cases recorded with the criminal divisions of the public prosecutor's offices in the Flemish Region had to do with illegal dumping, namely 33%.

Of these 2,785 dismissed cases almost 18% was, dismissed for opportunity-based reasons, more than 39% for technical reasons, and more than 43% for 'other reasons', which are the 'administrative fine', the 'Praetorian probation' and the 'signalling of the offender'.

In comparison with 2013, a decrease could be observed in 2014 in the percentage share of **dismissals** for opportunity-based reasons and a decrease in the percentage share of dismissals for other reasons and dismissals for technical reasons. It is precisely these dismissals for 'other reasons' that are important to evaluate the implementation of the Environmental Enforcement Act. One of these other reasons is namely the decision not to impose criminal sanctions in view of the imposition of an administrative fine.

It can generally be concluded that the percentage of the number of files that were referred to the AMMC since the Environment Enforcement Act came into operation in 2009 rose sharply. In 2014, this percentage did not rise further. Compared to 2013, the AMMC received even more environmental offences. This shows that the objective of the Environmental Enforcement Act is put into practice and that the two-fold track (criminal/administrative) is successful.

In order to meet the objective of the Environmental Enforcement Act it is also important, however, to closely monitor the cases of administrative fines. In general, the AMMC received a total of 7,833 official reports from the public prosecutor's offices since the entry into effect of the Environmental Enforcement Act. Between 1 May 2009 and 31 December 2014, a decision was reached in 68% of these 7,833 cases. 3,284 alternative administrative fines were imposed in this period. In addition, in 937 files it was decided not to impose a fine. Also, in 134 files it was concluded that the official report did not fall within the scope of the Environment Enforcement Act. Specifically for 2014 it can be concluded that AMMC has dealt with more files in the context of an alternative administrative fine (1,737) than the number of files that were received from the public prosecutor's offices (1,693). This is a positive evolution that indicates that the backlog has partly been resolved.

As far as the administrative transaction is concerned, it can be concluded, in line with other years, that this instrument is excellent for tackling small nuisance breaches. This year a total of 606 administrative transactions were proposed. In more than half of these proposals, namely 55%, the file related to waste (e.g. smaller illegal dumping), and in 34% of the proposals the file related to environmental management (e.g. fishery and access to forests). The level of payment of these administrative transactions is high, considering that in 2014 a total of 436 proposals to payment in the context of the procedure for administrative transactions were accepted. The AMMC made a number of these proposals in 2013 (20%) and a number in 2014 (80%).

In 2014, AMMC settled 31 files as part of the identified environmental breaches. In 20 files an exclusive

administrative fine was imposed, while in 4 files, it was decided not to impose a fine. The other files were for an administrative transaction.

In 2014, appeals were lodged with the Environmental Enforcement Court against 102 of the 848 alternative fines imposed by the AMMC, which means an appeals percentage of 12%. In comparison with 2012 and 2013, it can be concluded that the appeal percentage with regard to the decisions of the AMMC in the context of alternative administrative fines has risen slightly. In the Environmental enforcement report 2012, the ratio was 8% and in 2013 that appeals percentage was 10%.

The Environmental Enforcement Court reported it received 8 appeals in 2014 with regard to imposed exclusive and alternative administrative fines and reached a decision in 2014 in 5 cases. Two appeals were dismissed and thereby the fine imposed by the AMMC was confirmed and 3 of the appeals lodged were upheld partly or fully, with the reduction or vacation of the fine as a result.

A last part in the section of the evaluation of the sanctions policy has to do with the activities of the VLM in the context of their authority to impose administrative fines. In 2014, 3,272 fines were imposed by the VLM following 120 identifications and field inspections.

## 5.4 RECOMMENDATIONS

These recommendations are, on the one hand, logically based on the findings in this environmental enforcement report and thus arise from the conclusion of the findings as just presented. On the other, consideration has been given to an important degree to the recommendations made in the Environmental enforcement report 2013 (five-year Environment Enforcement Act). After all, those recommendations are to an important extent still current and can therefore, naturally within the light of the figures of 2014, be partially updated.

The recommendations will be grouped around the deployment of the (regional) supervisors, the instruments and the sanctions. These recommendations thus follow the structure that has been followed in this environmental enforcement report.

### **1. Efforts of (regional) environmental enforcement actors**

#### **1. Provide sufficient staff for enforcement.**

This seems obvious: effective environmental enforcement is naturally not possible when the competent authority does not provide sufficient resources for enforcement. Then the witticism applies that the text of the act (and the decree) will, to a large degree, remain a dead letter. But exactly in economically difficult times, in which authorities also are confronted with budgetary deficits, it remains important to realise that a good environmental quality is not a luxury, but a basic requirement for a decent existence. Although compliance with environmental legislation (to ensure the improvement of the quality of the environment) is fortunately not just dependent on enforcement (many actors will, after all, also comply with environmental rules without being forced to do so), the reality is that enforcement can prove the necessary symbolic incentive to compliance with the regulatory provisions and is not only an option but a legal duty that can be achieved through the threat of sanctions.

The Environmental enforcement report 2013 already contained recommendations for continuing to deploy sufficient staff for enforcement duties and also to continue to exert the necessary efforts for this.

#### **2. More emphasis on enforcement duties.**

It is not of course sufficient to appoint (almost symbolically) a large number of supervisors for environmental enforcement duties; there must also be the guarantee that these supervisors actually perform (and can perform) their enforcement duties. In some cases it can be seen (although large differences exist about this among the various supervisors) that supervisors are to an important degree made responsible for other (largely administrative) duties and thus spend relatively little time on environmental enforcement itself. However, it is positive news that the data shows that the total number of FTEs dedicated to environmental enforcement duties by regional enforcement actors has increased in the period from 2012 to 2014. On the other hand, in 2014, the 253 appointed municipal supervisors were able to spend less than ¼ of their time on enforcement duties. It is thus recommended that the mandatory number of supervisors per municipality should no longer be expressed in numbers but rather in FTEs that can be dedicated to enforcement duties. Otherwise there will always be the risk that municipal supervisors have been appointed on paper but in fact are able to spend little time on enforcement duties.

#### **3. Promote, where possible, intermunicipal collaboration concerning environmental enforcement.**

In previous environmental enforcement reports, it was made clear that, certainly in the smaller municipalities, it can be difficult to maintain an effective environmental enforcement when the number of enforcers with expertise and time is relatively limited. A collaboration in the context of an intermunicipal association could, among other things, also offer the advantage of scale enlargement and that (thanks, largely, to specialisation) a higher level of expertise can be achieved among the local enforcers.

The possibilities and advantages of intermunicipal collaboration, as recommended in 2013, deserve more attention and study. There are, after all, a number of advantages in the organisation of the supervision of the environmental legislation in the context of an intermunicipal association. It can be interesting for

smaller municipalities to organise themselves in this way. The designation of an intermunicipal supervisor could lead to an economy of scale in the area of expertise and spatial deployability of the supervisor. The VHRM has sought information from the intermunicipal associations that are known to be active with environmental enforcement. This inquiry taught us that three intermunicipal associations have appointed a supervisor. It is recommended that first a map be made of which intermunicipal associations have appointed supervisors and then subsequently to identify gaps in the local environmental enforcement and for which a solution could be provided by organising supervision within an intermunicipal association.

#### **4. Promote programmatic enforcement.**

Especially during a period in which the financial resources are restricted or actually decrease, it is important to deploy these scarce resources in a way whereby the highest environmental return can be achieved. This means that enforcement must largely be deployed where either breaches can be expected or where the damage to the environment through an offence would be relatively large. This therefore argues that, when deploying enforcement activities, these should not simply be reactive (in response to complaints) but also pro-active, for example by developing a programme, based on a risk analysis, whereby the enforcement activities are organised on the basis of expected risks and the possible advantages coupled to this for enforcement.

The figures about the relationship between the number of inspections taken pro-actively and those taken reactively (in response to a complaint) offers insight into the degree in which more inspections should be carried out at the supervisor's own initiative (programme based on a risk profile). The figures for 2014 show that in that year only 31% of the inspections were undertaken pro-actively (against 69% in response to complaints and reports), while the pro-active inspections amounted to 35% in both 2012 and 2013. Although the difference is slight, and can thus be based on coincidence, it seems that there is nevertheless a slight decline in the number of inspections undertaken pro-actively (although one year cannot, of course, lead to important policy conclusions). The point does illustrate that it remains important to deploy enforcement as much as possible on a programmed basis and based on a risk profile, in

order to achieve the highest possible environmental return on the enforcement efforts.

In the context of this recommendation, it is appropriate to refer to the allocation of tasks introduced in April 2014 between the regional and the local supervisors for the supervision of class 2 installations. In this new allocation of tasks, the regional supervisors assume the planned supervision of class 2 installations in order to allow the local supervisors to perform the reactive inspections. The figures above indicate that this new allocation of tasks in 2014 has not yet resulted in large shifts in the nature of the inspections. It is recommended that the new allocation of tasks be clarified to the various administration levels.

#### **5. Have provincial supervisors appointed.**

A point that has been raised in several previous environmental enforcement reports concerns the enforcement competence of the provinces. The Environment Enforcement Act has also given the Flemish provinces the possibility of appointing enforcers and it seems important that the provinces, as link between the local and the regional enforcers and with a focus on specific enforcement duties, can make use of this enacted competence. The figures for 2014 show that provincial supervisors have been appointed in compliance with the Environment Enforcement Act in only 1 of the 5 Flemish provinces.

However, the provinces perform as watercourse supervisors simultaneous supervision on the legislation that is not included in the act, but for which they have also been appointed. It is recommended that the provinces which have not yet appointed supervisors pursuant to the Environment Enforcement Act, should do this.

## **II. Instruments**

#### **6. Local: map out the number of plants subject to licensing or notification in the territory.**

An essential condition for an effective environmental enforcement is, of course, that one has the information concerning the plants located in one's own territory. Since this information is primarily available from the local authorities, this task would seem to be one for the local supervisors. A basic condition for enforcement is that a good picture should be available of the number



of plants in the territory that are subject to licensing or notification. This has already proved a matter of concern for several years since certain municipalities indicate that they have not been completely informed about the number of plants subject to licensing or notification in their own territory. Precisely for this reason, the Environmental enforcement report 2013 made the recommendation to map these plants at local level. From the data for 2014, it once again emerges that several municipalities indicate that they still do not have a clear picture of the number of plants subject to licensing or notification. That is why this recommendation is being repeated this year to map the number of plants subject to licensing and notification.

### **7. Focus on not fully licensed plants.**

In the context of the divisions of the enforcement efforts between the regional level and the local level, it seems proper that the local level is well equipped to map any incompletely licensed or non-notified plants. From this follows that, once the number of plants subject to licensing or notification has been listed (see previous recommendation), it should then be checked whether these plants actually have a licence or have made a notification. If this should not be the case, efforts should primarily be directed at this. The obligation for licensing or notification is, after all, the cornerstone of the administrative environmental law because conditions can be imposed via the licence or notification with a view to improving the environment quality and reducing nuisance. Although the number declined compared to 2013, it is once again striking that in 2014 a relatively large number of unlicensed or non-notified plants were identified. That is why the recommendation is made to focus the enforcement efforts primarily on enforcement of the obligation for licensing and notification (whereby, of course, this does not suggest that infringement of other regulatory obligations which could potentially lead to environmental damage are not of similar great importance).

### **8. Local: appointment of supervisors**

For several years, it has been an obligation under the act to appoint local supervisors. Although it would seem that most municipalities actually comply with this obligation, it also emerges that a limited number of municipalities do not comply with this obligation, so that, globally, insufficient supervisors are appointed. The Environmental enforcement report 2014 unfortunately

shows no improvement over last year. Naturally, the VHRM orders the local authorities to comply with their obligations (at the same time, a reminder is given of the recommendation made under no. 2, to give a better expression to this obligation to appoint local supervisors in FTE)

### **9. Make the enforcement of a timely observance of an administrative or safety measure a priority.**

When administrative or safety measures are imposed, it is the intention, as clearly stated in the Act, that an illegal situation (or, with safety measures, something that is even a potential danger to the environment) should be ended as swiftly as possible. Although the number of administrative and safety measures that actually are complied with is high, it transpires that, also in 2014, there are still a large number of administrative and safety measures that are not complied with by those subject to law. This total has risen slightly compared to 2012 and 2013. This is undesirable. It can both undermine the authority of the administrative body that imposed the measures and lead to the continuance of an illegal or even potentially dangerous situation. The VHRM therefore recommends that the competent authority will use all the measures granted it by the Act to enforce compliance with an imposed administrative or safety measure. For this, use can be made of administrative coercion, whereby the supervisor initiates the normalisation and recovers the costs from the offender or of the administrative penalty payment that is linked to the administrative measure. Finally, the supervisor can also have an official report drawn up for non-performance of an administrative measure. In such cases, the VHRM recommends that the Public Prosecutor will treat such breaches under criminal law, in order to send a clear signal to obstinate offenders.

## **III Imposition of sanctions**

### **10. Monitoring Priority Memorandum.**

As one is aware, a "Priority Memorandum on prosecution policy for environmental law in the Flemish Region" has been drawn up under the auspices of the VHRM, with the aim of indicating which offences should be considered as a priority by a supervisor. The content of the protocol implies that those breaches regarded as a priority should be suitably prosecuted, either via criminal proceedings or at least via administrative sanctions.

It is of course important to be able to gain insight into the implementation of this priority memo. This presumes on the one hand that all supervisors indicate clearly whether a breach is a priority but also, subsequently, that the sanctioning authorities also indicate in which way this breach, identified as a priority, should be handled and provide feedback on this to the supervisors. As an extension to this, a good monitoring system must exist in which the various actors indicate how the monitoring of the various identifications takes place.

In addition to the obvious attention for determining priority breaches in the Priority Memo, it is also recommended to give attention to dismissed breaches. When monitoring and discussing the priority memo, the dismissal policy can also be included.

#### **11. Make use of the possibilities of administrative fines.**

The VHRM recommends, naturally within the framework of the act and its discretionary competence, to make use of administrative fines via the AMMC. The VHRM recommends this largely because it is striking that important differences exist between the various public prosecutor's offices with regard to referring cases to the AMMC. Certain public prosecutor's offices seem to refer many cases to the AMMC, while this is hardly the case for others. The risk here is that certain environmental breaches in one region are subject to an administrative fine while similar environmental breaches in another region in Flanders do not receive an administrative fine, which of course does not benefit the legal certainty and uniformity in the enforcement.

In addition, making maximum use of the possibilities for imposing an administrative fine implies that the number of (opportunity) dismissals will decline.

#### **12. Try to reduce the regional differences between the public prosecutor's offices.**

Further to the previous recommendation, it is again striking that relatively important differences still exist between the public prosecutor's offices, not only in connection with referrals to the AMMC, but more generally concerning the prosecution of environmental cases. It can thus be recommended that efforts be made to achieve greater coordination and harmonisation of the environmental enforcement policy in order to

eliminate or at least reduce the regional differences identified. A possible way for reducing the regional differences could be to request input from the Flemish Region in drawing up policy plans for the various public prosecutor's offices.

#### **13. Sanctioning via GAS-regulations for illegal dumping**

One remarkable fact is that almost half the files registered in 2014 by the public prosecutor's offices had a waste-related charge code. These files are quickly referred to the AMMC where the theme of waste concerns nearly 40% of the number of files. Within these files there are several type examples that are preferably handled at the local level, with a GAS fine. There are quite a few breaches concerning the incorrect delivery of waste for household collection, leaving behind litter etc. The reason that these are nevertheless referred to the public prosecutor's office and, in some case, to the AMMC for an administrative fine, is that not all municipalities include (such) nuisance provisions in their police regulations or that a breach is not cited on the basis of the GAS regulations. Nevertheless, these are excellent examples of local nuisance that are highly suitable for being dealt with in the framework of the principle of subsidiarity at municipal level. It is therefore recommended that municipalities be stimulated to tackle such illegal dumping via GAS regulations and GAS fines.

## 6 ANNEXES

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- ▶ List of tables
- ▶ List of responding municipalities
- ▶ List of responding police districts

## 6.1 GLOSSARY OF TERMS – ABBREVIATIONS

/	Not available
AGR-GPS	Any means of transport used by a recognised Category B or Category C manure transporter for the transportation of manure or other fertilisers must be AGR-GPS compatible at all times. This AGR-GPS compatibility means that all recognised means of transport must be fitted with AGR-GPS equipment that is part of an operational AGR-GPS system. In addition, the signals sent by this equipment via a computer server which is managed by a GPS service provider, must be directly and immediately sent to the Manure Bank.
ALBON	Afdeling Land en Bodembescherming, Ondergrond en Natuurlijke Rijkdommen van het departement Leefmilieu, Natuur en Energie (Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy)
AMI	Afdeling Milieu-inspectie van het departement Leefmilieu, Natuur en Energie (Environmental Inspectorate Division of the Department of Environment, Nature and Energy)
AMMC	Afdeling Milieuhandhaving, Milieuschade en Crisisbeheer van het departement Leefmilieu, Natuur en Energie (Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy)
AMV	Afdeling Milieuvergunningen van het departement Leefmilieu, Natuur en Energie (Environmental Licences Division of the Department of Environment, Nature and Energy)
ANB	Agentschap voor Natuur en Bos (Agency for Nature and Forests)
ANG	Algemene Nationale Gegevensbank (General National Database)
AWV	Agentschap Wegen en Verkeer (Agency for Roads and Traffic)
AWZ	Afdeling Waterwegen en Zeekanaal NV (Agency for Waterways and Sea Canal)
B.S.	Belgisch Staatsblad (Belgian Official Journal)
DABM	Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy
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.

FTE	Full-time equivalents
GAS	Gemeentelijke Administratieve Sanctie (Municipal Administrative Sanction)
MHHC	Milieuhandhavingscollege (Environmental Enforcement Court)
MOW	Departement Mobiliteit en Openbare Werken (Department of Mobility and Public Works)
OVAM	Openbare Vlaamse Afvalstoffenmaatschappij (Public Waste Agency of Flanders)
REA/TPI	National IT programme for courts of first instance with applications for criminal divisions of public prosecutor's offices and registries, youth court prosecutors and registries, civil registries
RW	Ruimtelijke Ordening (Spatial planning)
SG	Secretary-General of the Department of Environment, Nature and Energy
VAZG	Vlaams Agentschap Zorg en Gezondheid (Agency for Care and Health)
VHRM	Vlaamse Hoge Handhavingsraad voor Ruimte en Milieu (Flemish High Enforcement Council for Spatial Planning and Environment)
VLM	Vlaamse Landmaatschappij (Flemish Land Agency)
VMM	Vlaamse Milieumaatschappij (Flemish Environment Agency)
VVSG	Vereniging van Vlaamse Steden en Gemeenten (Association of Flemish Cities and Municipalities)

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Aalst	Gistel	Ledegem	Rijkevorsel
Aartselaar	Gooik	Lendeledede	Roeselare
Alken	Grimbergen	Lennik	Ronse
Antwerp	Grobbendonk	Leopoldsburg	Roosdaal
Anzegem	Haacht	Leuven	Rotselaar
Arendonk	Haaltert	Lichtervelde	Ruiselede
As	Halle	Liedekerke	Rumst
Asse	Ham	Lier	Schelle
Avelgem	Hamme	Lierde	Scherpenheuvel-Zichem
Baarle-Hertog	Hamont-Achel	Lille	Schoten
Balen	Harelbeke	Linkebeek	Sint-Amands
Beernem	Hasselt	Lint	Sint-Genesius-Rode
Beerse	Hechtel-Eksel	Linter	Sint-Gillis-Waas
Beersel	Heers	Lochristi	Sint-Laureins
Begijnendijk	Heist-op-den-Berg	Lokeren	Sint-Lievens-Houtem
Bekkevoort	Hemiksem	Lommel	Sint-Martens-Latem
Berlaar	Herent	Londerzeel	Sint-Niklaas
Berlare	Herentals	Lubbeek	Sint-Pieters-Leeuw
Bertem	Herenthout	Lummen	Sint-Truiden
Bever	Herne	Maarkedal	Staden
Beveren	Herselt	Maaseik	Steenokkerzeel

Bierbeek	Herzele	Machelen	Temse
Blankenberge	Heuvelland	Malle	Ternat
Bonheiden	Hoegaarden	Mechelen	Tervuren
Boom	Hoeilaart	Meerhout	Tessenderlo
Boortmeerbeek	Hoeselt	Meeuwen-Gruitrode	Tielt-Winge
Borgloon	Holsbeek	Meise	Tienen
Bornem	Hooglede	Melle	Tongeren
Borsbeek	Hoogstraten	Menen	Torhout
Boutersem	Horebeke	Merchtem	Turnhout
Brasschaat	Houthalen-Helchteren	Merelbeke	Veurne
Brecht	Houthulst	Merksplas	Vilvoorde
Bredene	Hove	Meulebeke	Voeren
Bree	Huldenberg	Middelkerke	Vorselaar
Bruges	Hulshout	Mol	Vosselaar
Buggenhout	Ichtegem	Moorslede	Waregem
Damme	Ieper	Mortsel	Wellen
De Panne	Ingelmunster	Nazareth	Wemmel
De Pinte	Jabbeke	Nevele	Wervik
Deerlijk	Kampenhout	Niel	Wevelgem
Deinze	Kapellen	Nieuwpoort	Wezembeek-Oppem
Denderleeuw	Kasterlee	Nijlen	Wijnegem

Dendermonde	Keerbergen	Ninove	Wingene
Dentergem	Kinrooi	Oosterzele	Wommelgem
Destelbergen	Knesselare	Oostkamp	Wortegem-Petegem
Diepenbeek	Knokke-Heist	Oostrozebeke	Zandhoven
Diest	Koekelare	Opglabbeek	Zeke
Dilbeek	Koksijde	Opwijk	Zelzate
Dilsen-Stokkem	Kontich	Oudenaarde	Zemst
Drogenbos	Kortemark	Oudenburg	Zingem
Duffel	Kortenaken	Oud-Heverlee	Zoersel
Eeklo	Kortenberg	Oud-Turnhout	Zomergem
Essen	Kruibeke	Overijse	Zonhoven
Evergem	Kruishoutem	Pittem	Zonnebeke
Gavere	Laakdal	Poperinge	Zoutleeuw
Geel	Laarne	Putte	Zuienkerke
Geetbets	Landen	Puurs	Zulte
Genk	Langemark-Poelkapelle	Ranst	Zwalm
Ghent	Lebbeke	Ravels	Zwevegem
Geraardsbergen	Lede	Retie	Zwijndrecht

## 6.5 LIST OF RESPONDING POLICE DISTRICTS

Police district Aalst	Police district Kruikebeke/Temse
Police district Aalter/Knesselare	Police district Lanaken/Maasmechelen
Police district Aarschot	Police district Lier
Police district AMOW	Police district Lokeren
Police district Antwerpen	Police district Lommel
Police district Assenede/Evergem	Police district LOWAZONE
Police district Balen/Dessel/Mol	Police district Maasland
Police district Beringen/Ham/Tessenderlo	Police district Maldegem
Police district Berlare/Zele	Police district Mechelen
Police district Beveren	Police district Meetjesland Centrum
Police district Bierbeek/Boutersem/Holsbeek/Lubbeek	Police district Middelkerke
Police district Bilzen/Hoeselt/Riemst	Police district Midlim
Police district Blankenberge/Zuienkerke	Police district MIDOW
Police district BODUKAP	Police district MINOS
Police district Bredene/De Haan	Police district MIRA
Police district BRT	Police district Neteland
Police district Brugge	Police district Noord
Police district Buggenhout/Lebbeke	Police district Noorderkempen
Police district Damme/Knokke-Heist	Police district Noordoost Limburg
Police district Deinze/Zulte	Police district Oostende
Police district Demerdal DSZ	Police district Pajottenland

Police district Denderleeuw/Haaltert	Police district Polder
Police district Dendermonde	Police district Regio Puyenbroeck
Police district Dijleland	Police district Regio Rhode & Schelde
Police district Dilbeek	Police district Regio Turnhout
Police district Druivenstreek	Police district RIHO
Police district Erpe-Mere/Lede	Police district RODE
Police district Gavers	Police district Ronse
Police district Gent	Police district Rupel
Police district Grens	Police district Schelde/Leie
Police district Grensleie	Police district Sint-Gillis-Waas/Stekene
Police district Grimbergen	Police district Sint-Niklaas
Police district Haacht	Police district Sint-Pieters-Leeuw
Police district Hageland	Police district Sint-Truiden/Gingelom/Nieuwerkerken
Police district Halle	Police district SPOORKIN
Police district Hamme/Waasmunster	Police district TARL
Police district HANO	Police district Tervuren
Police district HAZODI	Police district Tienen/Hoegaarden
Police district Heist	Police district Vilvoorde/Machelen
Police district HEKLA	Police district Voorkempen
Police district HERKO	Police district Westkust
Police district Het Houtsche	Police district Wetteren/Laarne/Wichelen



Politiezone Kanton Borgloon	Politiezone Willebroek
Politiezone Kastze	Politiezone WOKRA
Politiezone Kempen N-O	Politiezone ZARA: Ranst/Zandhoven
Politiezone Kempenland	Politiezone Zottegem/Herzele/Sint-Lievens-Houtem
Politiezone Klein-Brabant	Politiezone Zuiderkempen
Politiezone K-L-M	Politiezone Zwijndrecht
Politiezone Kouter	



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Laïla Macharis, Management Assistant of the Flemish High Enforcement  
Council for Spatial Planning and Environment

### **Translation**

PRODUCTION n.v., Place Favresse 47, 1310 Terhulpen

### **REGISTERED NUMBER**

D/2017/3241/64

This report is available on the website of the Flemish High Enforcement  
Council for Spatial Planning and Environment: [www.vhrm.be](http://www.vhrm.be)

Duplication is acceptable on the condition that sources are credited.

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