



Flanders
State of
the Art

Environmental Enforcement Report 2015

PREFACE

2015 was a busy year for the Flemish High Enforcement Council for Spatial Planning and Environment. Within the context of the integrated environmental permit and to consolidate enforcement efforts in terms of the environment and spatial planning, the new range of spatial planning duties had to be introduced at a rapid pace. The Flemish High Enforcement Council was indeed responsible for coordinating the drafting of the Spatial Planning Enforcement Programme. In addition, the Flemish High Enforcement Council for Spatial Planning and Environment also prepared the first strategic multiyear programme, the Environmental Enforcement Programme 2015-2019.

In order to bring these two worlds, the environment and spatial planning, closer together in practice, the Flemish High Enforcement Council organised the first enforcement network day in the autumn of 2015. This network day saw a large turnout and was an excellent opportunity for enforcement bodies in both areas to get to know each other better. Participants were given an overview of the current policy status and were able to actively participate in workshops.

The Environmental Enforcement Report 2015 was the seventh annual report published by the Flemish High Council for Spatial Planning and Environment. Once again, this report provides a numerical overview of enforcement activities in 2015 and is an important source of information for everyone interested in the enforcement landscape. So therefore, on behalf of the Flemish High Council for Spatial Planning and Environment, I would like to thank the various bodies who provide the information necessary for the preparation of this Environmental Enforcement Report every year.

The first Spatial Planning Enforcement Report will also be presented in a separate document this year. Earlier this year, the authorised bodies were also asked about their enforcement activities for spatial planning in 2015. This report constitutes a baseline measurement, prior to the full entry into force of the decree on the enforcement of the integrate environmental permit.

Prof. Dr. Michael G. Faure LL.M.
Chairman of the Flemish High Enforcement Council for Spatial Planning and Environment

CONTENT

Preface	3
Content	4
1 Introduction	6
1.1 Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy	6
1.2 Methodology and relevance of the environmental enforcement report 2015	8
1.2.1 Methodology	8
1.2.2 Structure	9
1.2.3 Notes	10
1.3 Environmental enforcement policy	12
2 Evaluation	15
2.1 Evaluation of the regional environmental enforcement policy	15
2.1.1 Regional supervisors	15
2.1.2 Efforts related to environmental enforcement duties	17
2.2 Evaluation of the environmental policy pursued by the police	23
2.2.1 In general	23
2.2.2 Evaluation of the environmental enforcement policy pursued by the federal police	24
2.2.3 Evaluation of the environmental enforcement policy pursued by local police forces	27
2.3 Evaluation of the pursued local environmental enforcement policy	34
2.3.1 Provincial governors	34
2.3.2 Provincial supervisors (toezicht binnen het Milieuhand-havingsdecreet)	35
2.3.3 Competences of provinces regarding unnavigable watercourses (other than those included in the Environmental Enforcement Act) by appointed provincial staf (toezicht buiten het Milieuhandhavingsdecreet)	37
2.3.4 Mayors	38
2.3.5 Municipal supervisors	45
2.3.6 Intermunicipal associations	57
3 Evaluation of the use of the individual environmental enforcement instruments and safety measures	60
3.1 Inspections during which a breach was identified	61
3.2 Inspections without further action	64
3.3 Inspections with unknown results	66
3.4 Evaluation of the instrument 'recommendation'	68
3.5 Evaluation of the instrument 'exhortation'	70
3.6 Evaluation of the instrument 'identification report'	72
3.7 Evaluation of the instrument 'official report'	74
3.8 Evaluation of the instrument 'administrative measure' and 'appeals against decisions to impose administrative measures'	76
3.8.1 Evaluation of the instrument 'administrative measure'	76
3.8.2 Appeals against decisions to impose administrative measures	80
3.9 Evaluation of the instrument 'safety measure'	84
4 Evaluation of the Flemish Environmental Sanctions Policy	88

4.1	Evaluation of the criminal sanctions policy	90
4.1.1	Reception	94
4.1.2	State of progress	100
4.1.3	Reasons for dismissal	108
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	113
4.2.1	Processing of environmental offences	113
4.2.2	Processing of environmental infringements	121
4.3	Evaluation of the administration of justice by the environmental enforcement court	124
4.4	Evaluation of the sanctions policy pursued by the Flemish land agency	127
5	Conclusions and recommendations	130
5.1	Efforts	130
	Regional supervisors	130
	Local and Federal police	130
	Provinces	131
	Municipalities	131
5.2	Instruments	134
	Controles en overtredingen	134
	Raadgevingen en aanmaningen	134
	Verslagen van vaststelling en processen-verbaal	134
	Administrative measures and safety measures	135
5.3	Impositions of sanctions	136
5.4	Recommendations	138
I.	Local supervisors	138
II.	Risicogericht toezicht en programmatisch handhaven	139
III.	Monitoring	139
IV.	Het niet-tijdig uitvoeren van bestuurlijke maatregelen	140
V.	Milieuhandhaving als taak voor de politiediensten	141
VI.	Vaststelling sluikstorten	141
6	ANNEXES	142
6.1	Glossary of terms - abbreviations	143
6.2	List of graphs	145
6.3	List of tables	146
6.4	List of responding municipalities	149
6.5	List of responding police districts	151
	COLOPHON	157

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'¹, 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)².

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 Environment³. 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 website⁴. In addition to the plenary meeting, 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 for the first time has been given a time

¹ Publication in the Belgian Official Journal, 29 February 2009

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

³ Publication in the Belgian Official Journal, 19 March 2009

⁴ <http://www.vhrm.be/leden>

horizon of five years, contains recommendations for environmental enforcement based on the analysis of the individual programmes of all bodies as defined by the Environmental Enforcement Decree. The Environmental Enforcement Programme 2015-2019 also contains a strategic and operational plan of the VHRM itself and concrete policy recommendations on the themes of water, waste and the exchange of information. The Environmental Enforcement Programme 2015-2019 can be found on the VHRM website⁵.

- ▶ 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 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. These environmental enforcement reports from 2009 through 2014 are available on the VHRM website⁶.

In addition, the VHRM is also responsible for coordinating the preparation of a draft Spatial Planning enforcement programme. The draft of the Spatial Planning Enforcement Programme, coordinated by the Flemish High Enforcement Council for Spatial

Planning and Environment, was submitted to the Cabinet of Minister Schauvliege on 31 March 2015. On 17 July 2015, the Government of Flanders approved the Spatial Planning Enforcement Programme. Both documents can be found on the VHRM website⁷.

The VHRM is also responsible for drawing up an annual Spatial Planning Enforcement Report, similar to the Environmental Enforcement Report. The VHRM decided to prepare the first Spatial Planning Enforcement Report for the year 2015. With a view to the full entry into force of the integrated environmental permit enforcement decree and the changes this will entail in the enforcement instruments, this report will serve as a baseline measurement for future reports. This means that no integrated enforcement report 2015 will be drawn up yet, but that the Environmental Enforcement Report 2015 and the Spatial Planning Enforcement Report 2015 will be published as two separate documents.

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

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

⁷ <http://www.vhrm.be/programma-ruimtelijke-ordening>

1.2 METHODOLOGY AND RELEVANCE OF THE ENVIRONMENTAL ENFORCEMENT REPORT 2015

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 2015 through 31 December 2015.

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. New for 2015 was the fact that the majority of the players, in the context of 'radical digital' (see Coalition agreement 2014-2019⁸), received a digital questionnaire for the first time.

The following actors were asked about their activities in the area of environmental law enforcement between 1 January 2015 and 31 December 2015:

- ▶ the Environmental Inspectorate Division of the Department of Environment, Nature and Energy (LNE-AMI);
- ▶ the Environmental Licences Division of the Department of Environment, Nature and Energy (LNE-AMV);
- ▶ the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy (LNE-AMMC);
- ▶ the Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy (LNE-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;

⁸ <http://www.vlaanderen.be/nl/publicaties/detail/het-regeerakkoord-van-de-vlaamse-regering-2014-2019>

- ▶ the Environmental Enforcement Court;
- ▶ the public prosecutor's offices.

As indicated in the list above, the inter-municipal associations active in the enforcement of environmental law were also surveyed. After all, the Environmental Enforcement Decree stipulates that municipalities may choose to use the services of a supervisor via inter-municipal 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 2015 and 31 December 2015, 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 2015 and 31 December 2015.

Based on the information obtained via the standardised questionnaire, a quantitative picture will be provided of the activities of the enforcement actors in 2015. 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 2015. 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 2015.

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 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) and the Environmental Enforcement, Environmental Damage and Crisis Management Division (LNE-AMMC) of the Department of Environment. An overview of the activities of public prosecutors and the Environmental Enforcement Court (MHHC) is also provided.

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. Not only the data relating to 2015 will be used to carry out the evaluation below, but also, where possible and relevant, a comparison will be made with the data from previous years and from previous reports.

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 seventh 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. On the positive side we see that the response rate continues to increase every year, and also this year, except for the local police.

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 2015 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).

To avoid increasing the reporting burden unnecessarily, the questionnaire was only expanded to

a limited extent compared to previous years and in view of changes to the range of instruments. 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 2015, 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 seventh 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 2015. 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 2014-2019⁹ 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 addition, this coalition agreement stipulates that, as part of the modernisation of the range of instruments and the creation of an even more efficient government, the policy lines and priorities of the enforcement of the integrated environmental permit will be elaborated in the enforcement programme and that the instruments of administrative enforcement will be deployed optimally. 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 2014-2019 of the Flemish Minister Joke Schauvliege¹⁰ 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 Bourgeois¹¹ 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

⁹ <http://ebl.vlaanderen.be/publications/documents/60797>

¹⁰ <http://ebl.vlaanderen.be/publications/documents/65581>

¹¹ <http://ebl.vlaanderen.be/publications/documents/65542>

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

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.

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 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.”

2 EVALUATION

The purpose of this chapter is to evaluate the Flemish environmental enforcement policy from 1 January 2015 through 31 December 2015. It reports on the enforcement and supervisory activities of the different actors who were active in the Flemish Region in 2015. Where possible and relevant, a comparison will also be made with the data collected by the VHRM in previous environmental enforcement reports.

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 (LNE-AMI); the Environmental Licences Division of the LNE Department (LNE-AMV); the Land, Soil Protection, Subsoil and Natural Resources Division of the LNE Department (LNE-ALBON); the Flemish Land Agency (VLM); the Flemish Environment Agency (VMM); the Agency for Care and Health (VAZG); the Agency for Nature and Forests (ANB); the Public Waste Agency of Flanders (OVAM), and Waterwegen en Zeekanaal nv. (AWZ) Since 2010, following the introduction of the amendment decree of the Government of Flanders of 19 November 2010, the Agency for Roads and Traffic (AWV), the Maritime Access Division of the Department of Mobility and Public Works (MOW) 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 2015. Table 1 shows the number of supervisors used by the regional enforcement actors in 2015. The data from the Environmental Enforcement Report 2014 and the Environmental Enforcement Report 2013 also made it possible to compare the total number of supervisors available to the supervisory body in 2013, 2014 and 2015

NUMBER OF SUPERVISORS

REGIONAL ENFORCEMENT ACTOR	2013	2014	2015
LNE-ALBON	15	15	13
LNE-AMI	101	114	117
LNE-AMV	80	84	84
ANB	166	162	162
AWZ	65	62	68
AWV	62	59	58
VAZG	20	/	18
NV De Scheepvaart (Shipping Agency)	30	30	30
OVAM	112	112	112
VLM	45	42	45
VMM	17	22	21
MOW - Division Maritime Access	9	9	13
Total	722	711	741

Table 1: Number of supervisors per regional supervisory body in 2013, 2014 and 2015

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

- ▶ In 2015, the Secretary-General of the Department of Environment, Nature and Energy did not carry out any supervision since, as in 2013 and 2014, there were no exceptional circumstances in which his authority had to be used in 2015. The Secretary-General of the Department of Environment, Nature and Energy is therefore not included in the tables and graphs.
- ▶ The VLM (Flemish Land Agency) has 45 supervisors at its disposal, 35 of whom effectively carry out inspection tasks as their main task (mainly in the field). The VLM has 39.75 FTE supervisors in total working hours. These are broken down into 30.95 FTEs in both regions, 2 FTE cell heads in both regions, 4.45 FTEs in the central management in Brussels (management, coordination and administrative support) and 2.35 FTEs as administrative support in the regions. All of these people are supervisors.

It can be deduced from table 1 that a total of 741 regional supervisors were appointed in 2015. This is an increase compared to the 722 regional supervisors in 2013 and the 711 regional supervisors appointed in 2014. This increase from 2014 to 2015 can mainly be explained by the supervisors of the VAZG (Flemish Agency for Care and Health). Indeed, these figures were not available for 2014. If the comparison is made with 2013, the increase in the number of regional supervisors in 2015 can mainly be explained by the increase in the number of supervisors at the LNE-AMI.

As in previous years, the table shows the wide variety of entities where 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.

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 2015 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.

Table 2 not only gives a picture of the total amount of time the regional supervisors dedicated to environmental enforcement duties - in FTEs - in 2015, 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 2014 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
	2013	2014	2015	2015	2015
LNE-ALBON	2,7	2,7	2,40	2,2	0,2
LNE-AMI	80,93	91,8	91,7	82,4	9,3
LNE-AMV	2	2	3,95	3,45	0,5
ANB	39,4	39,3	37,20	36,2	1
AWZ	1	0	0,01	0,01	0
AWV	0,95	1	1,00	0,8	0,2
VAZG	0,79	/	3,91	2,98	0,93
NV De Scheepvaart (Shipping Agency)	/	/	1,10	1	0,1
OVAM	9,8	9,9	8,90	5,9	3
VLM	27,6	27,42	30,95	30,95	0
VMM	0,6	0,6	0,6	0,3	0,3
MOW - Division Maritime Access	0	0	0,00	0	0
Total	165,77	174,72	181,72	166,19	15,53

Table 2: Efforts of the regional supervisory body related to environmental enforcement duties in 2013, 2014 and 2015

A positive evolution can be observed with regard to the total number of FTEs working on environmental enforcement tasks for the regional supervisory bodies. As indicated earlier, not only were more supervisors appointed, but more FTEs were actually deployed for environmental enforcement duties by these supervisors. In 2015, almost 16 more FTEs were deployed for on environmental enforcement tasks than in 2013. As with the number of appointed supervisors, this increase in the number of FTEs is mainly due to the LNE-AMI.

Similar to previous years, it can be stated for 2015 that a wide variety exists between the various regional supervision actors concerning the deployed FTE that is spent on enforcement duties. Certain bodies deploy a large number of FTEs for enforcement tasks, while other environmental enforcement bodies use only a small number of FTEs for environmental enforcement tasks. For example, we can see that more than half of

the total number of FTEs deployed for environmental enforcement tasks by regional enforcement bodies worked for the LNE-AMI, i.e. 91.7 FTEs. Other enforcement bodies deployed very few, if any, FTEs for environmental enforcement tasks, such as the Maritime Access Division of the MOW (Mobility and Public Works Policy Area) and the AWZ. In 2015, they had 13 and 68 regional supervisors at their disposal and deployed 0 and 0.01 FTEs respectively for environmental enforcement tasks. The reason, of course, is that environmental enforcement is not one of their priority tasks.

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 2015 and 31 December 2015. 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"¹². Table 3 provides an overview of the total number of environmental enforcement inspections carried out by the supervisors in 2015. To provide a comparison, the total number of environmental enforcement inspections carried out in

NUMBER OF ENVIRONMENTAL ENFORCEMENT INSPECTIONS

REGIONAL ENFORCEMENT ACTOR	2013	2014	2015
LNE-ALBON	267	272	231
LNE-AMI	11.884	11.964	13.305
LNE-AMV	720	949	1764
ANB	8.479	9.087	9.531
AWZ	/	/	1
AWV	193	201	124
VAZG	3.491	/	4.585
Nv De Scheepvaart (Shipping Agency)	/	/	41
OVAM	354	402	3.323 ¹³
VLM	3665	4.658	4.687
VMM	15	25	33
MOW - Division Maritime Access	0	0	0
Total	29.068	27.558	37.625

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

¹² The VHRM glossary can be found in the secured section 'for the supervisor' on the VHRM website:
<http://www.vhrm.be/toezichthouders>

2014 and 2013 per regional supervisory body is also shown.

To put the table 3 in its right context, the following marginal comments need to be made:

- ▶ The AWZ reported that the violation was established during the daily operation at the site. In addition, AWZ supervisors also use the services of other enforcing bodies for enforcement purposes (e.g. for the preparation of the official report).
- ▶ The VLM reported that 4,687 environmental enforcement inspections were carried out in 2015. These inspections include the following types of reports: 3,984 initial inspection reports, 156 follow-up inspection reports, 182 initial official reports, 57 follow-up official reports, 299 sampling reports, 1 safety measure, 8 follow-up administrative measures (an official report is always drawn up when an initial administrative measure is prepared, and these are not counted again).
- ▶ The VMM indicated that all inspections in which VMM - Water Reporting Division (VMM-ARW) participated were carried out in the presence of other supervisors and that it was the other supervisors who, where necessary, drew up an official report, issued warnings, etc. However, this was not tracked. VMM-ARW does not keep track of the number of inspections as a supervisor, nor of the advice given orally. Following inspections carried out by the VMM Operational Water Management Division, 3 official Spatial Planning reports were drawn up, albeit not by the VMM.
- ▶ The LNE-ALBON reported 147 on-the-spot checks (110 inspections and 37 measurements) and 84 documentary checks (progress reports).
- ▶ The LNE-AMV reported that it had started 1,764 inspections in 2015. Of these, 1,277 were completed in 2015. A total of 487 inspections were started and not finalised. Inspections started in previous years and only completed in 2015 were not included in the figures.
- ▶ The LNE-AMI indicates that 13,076 inspections (on-the-spot checks) and 229 documentary checks were carried out in 2015 for which work reports were drawn up. The number of on-site inspections also includes the Seveso inspections carried out by the Supervisory Service for Major Hazard Companies. These inspections were carried out within the framework of both the Environmental Enforcement Decree and the Cooperation Agreement on the control of major accidents involving hazardous substances.

Table 3 shows that the regional supervisors carried out a total of 37,625 inspections. This is a significant increase compared to the 27,558 inspections carried out in 2014. This increase can partly be explained by the fact that no figures were available for VAZG in 2014 with regard to the number of inspections carried out by this enforcement body. A substantial increase in the number of inspections carried out by OVAM can also be observed. They carried out 354 inspections in 2013 and 402 in 2014. This number increased enormously in 2015 when OVAM carried out 3,323 inspections. This difference between the figures for 2014 and 2015 was caused by the 'Integrated Environmental Annual Report' (IEAR) inspections carried out by OVAM. Every odd year, a large sample of companies (about 15,000 waste producers) have to report their waste figures for the previous year via the IEAR. Every even year, the sample of companies is smaller (approx. 3,000 waste producers). In the years with a large sample, many

¹³ 2.771 inspections were carried out by own supervisors; for 552 inspections carried out by external inspection services, police,

customs, etc., supported was provided by OVAM (Public Waste Agency of Flanders).

companies (2000 to 3000) did not respond to the invitation sent via LNE's IEAR desk. In the years with a small sample, this is lower (approx. 50 to 100). The companies that do not respond to the invitation receive an official warning (as provided in the Environmental Enforcement Decree) from OVAM to report via the IEAR. Every company that receives such a warning is counted as one inspection by OVAM. In 2014, 15 warnings were sent (year with small sample) and 3 incident reports were subsequently drawn up. In 2015, 2,372 warnings were sent (year with a large sample) and 44 incident reports were subsequently drawn up. IEAR follow-up and the sending of warnings has been automated as much as possible so that the required time does not increase significantly when more warnings have to be sent. As a result, there is no real difference in the number of FTEs deployed each year.

The number of inspections carried out for LNE-AMI and LNE-AMV also increased in 2015 compared with 2014 and 2013. The increase for LNE-AMI can be explained by the fact that, in order to enforce more efficiently and effectively, further efforts were made in 2015 to internally optimise the use of the available inspection capacity and to adopt an accurately targeted and risk-based inspection approach. This more efficient approach resulted in an increase with 1,000 inspections, from 12,000 to 13,000 on an annual basis. The more targeted and risk-based approach resulted in a higher degree of detecting violations. A large part of the increase in the number of environmental enforcement inspections carried out for LNE-AMV can be attributed to a large-scale inspection of payment of

the public service charge, pursuant to article 54/1, para 2 of the VLAREL¹⁴.

For each enforcement body, with the exception of LNE-ALBON and AWV, the number of environmental enforcement inspections carried out in 2015 was higher than in 2014.

In line with the number of designated supervisors and the FTE deployed for enforcement duties, one can, however – again in 2015 - identify a large diversity between the number of inspections performed by the various regional supervisory agencies¹⁵.

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 2014 and 2013.

¹⁴ The decree of the Government of Flanders of 19 November 2010 establishing the Flemish regulation on environmental accreditations (coordinated version of VLAREL).

¹⁵ 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
LNE - ALBON	13	2,40	231	18	96
LNE - AMI	117	91,7	13.305	114	145
LNE - AMV	84	3,95	1764	21	447
ANB	162	37,20	9.531	59	256
AWZ	68	0,01	1	0	100
AWV	58	1,00	124	2	124
VAZG	18	3,91	4.585	255	1.173
Nv De Scheepvaart (Shipping Agency)	30	1,10	41	1	37
OVAM	112	8,90	3.323	30	373
VLM	45	30,95	4.687	104	151
VMM	21	0,60	33	2	55
MOW - Division Maritime Access	13	0,00	0	0	0
Total	741	181,72	37.625	51	207
2014				39	158
2013				40	175

Table 4: Efforts related to environmental enforcement duties 2015

The table 3 shows that, in 2015, 51 inspections were carried out on average per supervisor. This is an increase compared to the 40 inspections per supervisor in 2013 and the 39 inspections per supervisor in 2014. This increase can be explained by the sharp increase in the total number of environmental enforcement inspections carried out. As indicated earlier, the increase in the number of environmental enforcement inspections carried out was mainly attributable to OVAM, AMI and AMV.

However, if this information is considered separately for the various regional supervisory authorities, the picture is more diversified. For example, a VAZG supervisor carried out at least 255 inspections in 2015 whereas this was only 2 inspections per supervisor in the case of, for example, AWV and AWM. This difference could be explained, among other things, by the nature of the inspections carried out and by the fact that for certain supervisors the enforcement of environmental legislation is virtually their exclusive task, whereas for other supervisors, enforcement is only a small part of the employee's duties.

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 2015. On average, the supervisors performed 207 inspections per FTE. This is an increase compared to the 175 environmental enforcement inspections per FTE in 2013 and the 158 environmental enforcement inspections per FTE in 2014. This increase can be explained by the sharp increase in the number of environmental enforcement inspections carried out. For certain bodies, the average number of inspections per FTE is a fictitious scenario as no more than 1 FTE was deployed for enforcement tasks within their organisation. This is the case for AWZ and VMM and therefore the average number of inspections per FTE is higher than the total number of environmental enforcement inspections carried out by these enforcement bodies in 2015.

The results of these environmental enforcement inspections carried out by the regional enforcement bodies will be discussed in Chapter 3 'Evaluation of the use of the individual environmental enforcement instruments and safety measures'.

2.2 EVALUATION OF THE ENVIRONMENTAL 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 2015 and 31 December 2015. 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 2015.

The figures include both the initial official reports and the simplified official reports. 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 management¹⁷.

In total, the police forces drew up 13,373 official reports in the Flemish Region in 2015. Just over 97% of these reports were drawn up by the local police and less than 3% by the federal police.

Just over half, namely 56%, 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 fireworks fraud. The second largest category is 'waste by private person'. This category represents 19.5% in the total number of identified breaches.

In comparison with the data in the Environmental Enforcement Report 2014, the number of reports fell, namely from 15,303 in 2014 to 13,373 in 2015. 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.

¹⁶ 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.

¹⁷ <http://www.lokalepolitie.be/5412/algemene-informatie/199-de-algemene-nationale-gegevensbank.html>

OFFICIAL REPORTS ENVIRONMENTAL CRIME

TYPE OF BREACH	Units			Total
	Federal police	Local Police	Other	
Waste by professional person	19	370	1	390
Waste shipment	28	75	0	103
Waste: licence-recognition	2	43	2	47
Waste by private person	81	2.974	7	3.062
Air pollution	4	408	0	412
Water pollution	19	141	1	161
Soil pollution	8	110	2	120
Environment Noise pollution	1	310	2	313
Environmental taxes and levies	1	9	0	10
Environment flora fauna Destruction	0	226	0	226
Environment flora fauna Animal Welfare	6	764	2	772
Environment flora fauna Nature protection	9	171	2	182
Environment flora fauna Licence recognition	5	49	1	55
Other phenomena linked to environment	161	7.357	2	7.520
Total	344	13.007	22	13.373

Source: ANG

Table 5: Official reports drawn up by police forces for environmental offences in the Flemish Region in 2015

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 2015. It was asked, among other things, how many official reports were entered in the General National Database on Environmental Offences in 2015 where the identifying unit belonged to the federal police. These data were presented in table 5. 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 2015.

Within the federal police force 118 people were part of the Environmental Network in Flanders in 2015. 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 198 members of local police forces. However, the figure of 118 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 118 people should therefore be regarded as indicative only.

It is more accurate to say that in 2015 38 FTEs within the federal police force were actively involved in environmental enforcement in the Flemish Region. This concerned 6 FTEs within the Environment Division of the Directorate of Crime against Goods, 15 FTEs of research capacity within the Federal Judicial Police and 17 FTEs of phenomenon coordinators. These phenomenon coordinators, examine and monitor the

phenomenon 'environmental crime'. Compared to 2014, the number of FTEs actively involved in environmental enforcement in the Flemish Region fell within the federal police. In 2014, there were just 49 FTEs. Investigative capacity in particular fell sharply, from 31 FTEs in 2014 to 15 FTEs in 2015. On the other hand, the number of phenomenon coordinator FTEs increased from 10 FTEs in 2014 to 17 FTEs in 2015.

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 2015, a total of 439 initial official reports were entered in the General National Database¹⁸ on Environmental Offences, and this only on the territory of the Flemish Region and where the identifying unit belonged to the federal police force. The reduced investigative capacity in FTEs is not reflected in a sharp decline in the number of official reports drawn up. In fact, 354 official reports were drawn up in 2014. 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

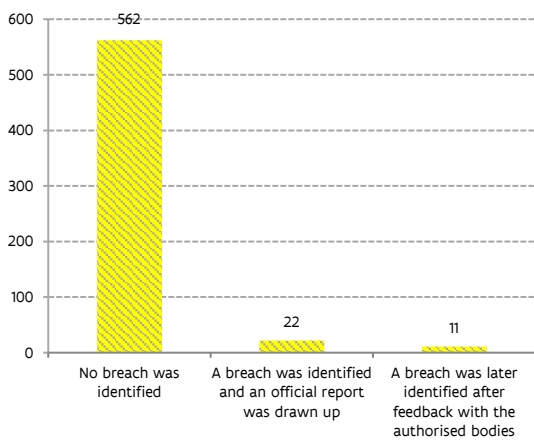
Proactive inspections in the framework of waste shipments on the territory of the Flemish Region

In addition to the above reactive inspections, the federal police also carried out 595 proactive inspections in 2015 in the context of waste shipments on the territory of the Flemish Region. So the reduced investigative capacity in FTEs is also not reflected in the proactive checks carried out. On the contrary, the number of proactive audits increased in 2015 from 531 in 2014 to 595 in 2015. 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 2012-2015¹⁹ in which the federal government has decided to prioritise waste management fraud, among other things. It should be noted that these figures for waste shipments only include those shipments of waste for which an ECO form has been prepared and sent to the central service DJSOC/Environment. In other words, the inspections of waste shipments for which no ECO form has been prepared or submitted are not reflected in these figures; the figures will therefore be underestimated.

The graph below gives an overview of the results of the 595 inspections carried out by the federal police in 2015 related to waste shipments.

¹⁸ Extraction: February 2016 - the relevant figures are likely to be higher as the ANG and the ECO forms database are updated on a daily basis.

¹⁹ <http://www.polfed-fedpol.be/pub/pdf/NVP2012-2015.pdf>



Graph 1: Proactive inspections (reported by the completion of an ECO form) of waste shipments on the territory of the Flemish Region in 2015

No infringements were found in 562 inspection cases. An infringement was detected during 22 inspections and an official report was drawn up immediately when the ECO form was filled in²⁰. It is possible that violations were found afterwards, after the data had been checked by the administration. Currently, 11 additional infringements have been detected as a result. These were included in the graph above as 'A violation was found following feedback from the authorised administration'. After the ECO form for waste has been completed, it is submitted to the Environment Service of the Federal Judicial Police for further analysis.

We should also mention that the local police also carried out waste shipment inspections in 2015. In 2015, 270 waste transport checks were carried out by the local police. This is a decline compared to the 451 inspections carried out in 2014. In the case of 238 inspections carried out in 2015, no infringements were detected. 23 official reports were drawn up at the time of filling in the ECO form. Afterwards, after the data were checked by the administrations, 9 violations were found. These data may also be underestimates, given that the figures for waste shipments only include those

²⁰ 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.

shipments of waste for which an ECO form has been drawn up and sent to the central service DJSOC/Environment. As previously reported, the checks carried out on shipments of waste for which no ECO form has been prepared or submitted cannot be found in these figures.

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

The 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 2015 with regard to a specific environmental theme. However, the activities of the local police supervisors are treated in this 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 198 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).

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:

- ▶ title III of DABM
- ▶ the Air Pollution Act;
- ▶ the Surface Waters Act, as regards the discharge of waste water and the detection of all forms of water pollution;
- ▶ the Noise Abatement Act;
- ▶ articles 11, 12, 13, 23, 25, para 1, article 39 and 40 of the Materials Decree;
- ▶ the Groundwater Decree;
- ▶ the Environmental Permits Decree;
- ▶ the Manure Decree and its implementing decrees;
- ▶ the decrees implementing the laws and decrees referred to in points 1° to 7°;
- ▶ chapter 6.3 of part 6 of title II of the VLAREM regulation;
- ▶ Regulation (EC) no. 1005/2009 of the European Parliament and the Council of 16 September 2009 on ozone-depleting substances;
- ▶ Regulation (EC) no.1069/2009 of the European Parliament and the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) no.1774/2002;
- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC;
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste;

- ▶ the Pesticides Decree and its implementing decrees;
- ▶ Regulation (EU) no. 517/2014 of the European Parliament and the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) no. 842/2006.

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 2.3.5), 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. Where relevant, comparisons will be made with previous

years on the basis of the previous Environmental Enforcement Reports.

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 2015
≤ 24.999	8	4
25.000 - 49.999	67	43
50.000 - 74.999	23	13
75.000 - 99.999	8	6
≥ 100.000	8	4
Total	114	70
2014	116	97
2013	117	95

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 70 of the 114 police districts²¹ in the Flemish Region. This represents a response rate of almost 61.5%. This is a lower response rate compared to the Environmental Enforcement Report 2013 and the Environmental Enforcement Report 2014 whose response rates were 81% and 83% respectively. This lower rate may be explained by the fact that, for this environmental enforcement report, the VHRM carried out a digital survey of the enforcement bodies for the first time.

²¹ The number of police districts was lower in 2015 as a result of the merger of the Mechelen police district and the Willebroek police

district, and the merger of the Beveren police district and the Sint-Gilles-Waas police district.

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 VLAREM officer, or a supervisor or a VLAREM officer of an intermunicipal association, or a supervisor or a VLAREM officer of a police district.

A municipality with more than three hundred Category 2 plants in accordance with Title I of Vlarem or with more than thirty thousand inhabitants if the number of plants is insufficiently known, are at least required to have two supervisors at their disposal. 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 2015. 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	Total 2015	Total 2014	Total 2013
Response	4	43	13	6	4	70	97	95
Police district with appointed supervisor	2	13	10	6	1	32	32	34
Police district without appointed supervisor	2	30	3	0	3	38	65	61
Number of appointed supervisors	5	18	25	8	4	60	59	56
Average number of supervisors per police district	3	1	3	1	4	2	2	2
Total amount of time dedicated to environmental enforcement duties by supervisor (FTE)	0,10	10,29	7,72	4,25	4	26,36	27,69	24,48
Of which FTEs dedicated to environmental enforcement duties by the supervisors within the framework of the Environmental Enforcement Act	0,10	6,99	7,61	3,20	4	21,90	22,74	20,46
Of which FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors	0,00	3,30	0,11	1,05	0,00	4,46	4,95	4,02
Average amount of time dedicated to environmental enforcement duties per supervisor (FTE)	0,02	0,57	0,31	0,53	1,00	0,44	0,47	0,44
Police district that has no insight into the amount of time dedicated per supervisor	2	30	3	0	4	39	5	/

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

From the table above it can be deduced that 32 of the 70 responding police districts used the services of a supervisor appointed within their own police district in 2015. This corresponds to nearly 46% of the total number of responding police districts. In view of the decreasing response rate, this is an increase compared to 2013 when almost 36% of the responding police districts had a supervisor at their disposal, and compared to 2014, when 33% had a supervisor at their disposal.

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 2014, 60, which means 1.88 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.

Despite the decreasing response rate, the number of supervisors increased for 2015, compared to the 59 appointed supervisors in 2014 and the 56 appointed supervisors in 2013.

Despite the fact that the number of supervisors appointed by the local police increased in 2015, a slight decrease in the number of FTEs deployed for environmental enforcement tasks within the police districts can be observed compared to 2014. In 2013, a total of almost 25 FTEs were deployed for environmental enforcement tasks within police districts, in 2014 almost 28 FTEs, and in 2015 this number fell to just over 26 FTEs. Despite the increase of supervisors appointed within the local police districts, this results in a slight decline in the average amount of time spent per supervisor on environmental enforcement duties in 2015 vs. 2014. In 2013, this amounted to 0.44 FTEs. In 2014, this increased to 0.47 FTEs, but on the basis of the above table, we see that in 2015 it returned to the 2013 level of 0.44 FTEs. However, these differences are really quite small. In general, we can conclude that the average supervisor in the local police is just under half-time employed in environmental enforcement tasks.

In 2013, 2014 and 2015, 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 time²² dedicated by each local police supervisor to environmental enforcement duties - which also includes the FTEs dedicated to administrative support - amounted to 0.44 FTEs in 2013, to 0.47 FTEs in 2014 and to 0.44 FTEs in 2015. Since there was an average of 1.88 supervisors per police district with an appointed supervisor in 2015, an average amount of time²³ of 0.83 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 Environment Enforcement Act by this/these police district supervisor(s) between 1 January 2015 and 31 December 2015. Comparisons with 2014 and 2013 are also provided on the basis of the figures from previous environmental enforcement reports.

ENVIRONMENTAL ENFORCEMENT INSPECTIONS

	≤ 24.999	25.000 - 49.999	50.000 - 74.999	75.000 - 99.999	≥ 100.000	Total 2015
Response	4	43	13	6	4	70
Number of appointed supervisors	5	18	25	8	4	60
Number of carried out environmental enforcement inspections	25	395	1.531	2.424	1.286	5.661
Average number of environmental enforcement inspections per supervisor	5	22	61	303	322	94
<i>2014</i>	<i>4</i>	<i>104</i>	<i>44</i>	<i>9</i>	<i>178</i>	<i>83</i>
<i>2013</i>	<i>7</i>	<i>70</i>	<i>50</i>	<i>35</i>	<i>338</i>	<i>85</i>
Average amount of time dedicated to supervisory duties per supervisors (FTE)	0,02	0,57	0,31	0,53	1	0,44
<i>2014</i>	<i>0,72</i>	<i>5,79</i>	<i>2,29</i>	<i>2,25</i>	<i>14,83</i>	<i>1,41</i>
<i>2013</i>	<i>0,10</i>	<i>0,24</i>	<i>0,58</i>	<i>0,23</i>	<i>1,17</i>	<i>0,44</i>
Average number of environmental enforcement inspections per FTE	250	38	198	570	322	215
<i>2014</i>	<i>104</i>	<i>311</i>	<i>89</i>	<i>17</i>	<i>214</i>	<i>177</i>
<i>2013</i>	<i>70</i>	<i>297</i>	<i>86</i>	<i>124</i>	<i>290</i>	<i>195</i>

²² 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.

²³ 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.

Table 8: Overview of efforts related to environmental enforcement duties by local police supervisors (according to population) in 2015

In 2015, the 60 appointed supervisors of the local police carried out 5,661 environmental enforcement inspections. In 2014, 4,900 environmental enforcement inspections were carried out by 59 local police supervisors and in 2013, 4,762 inspections were carried out by 56 supervisors. This means that in the past three years not only has the number of appointed supervisors increased, but also the number of inspections carried out by these supervisors.

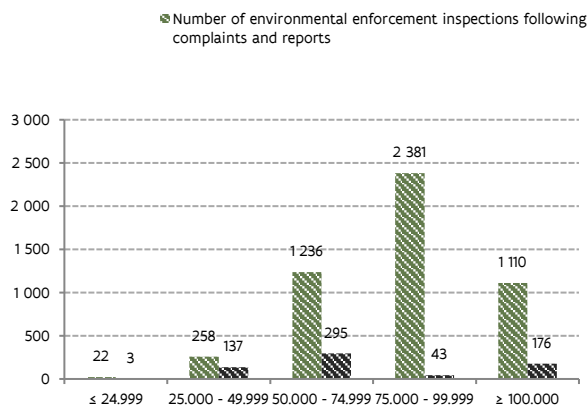
The average number of environmental enforcement inspections per supervisor was 85 in 2013 and 83 in 2014. In 2015, this rose to an average of 94 environmental enforcement inspections per supervisor. This can be explained by the fact that the number of inspections carried out increased more than the number of appointed supervisors in 2015, compared to 2014. The number of inspections increased by 15.5% in 2015 compared to 2014, while the number of supervisors only increased by almost 2%.

As in previous reports, it can again be seen that in 2015 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 322 environmental enforcement inspections in 2015.

Over the various classes of police areas, the average number of inspections per FTE in 2015 was 215. This signifies a rise compared to the 177 inspections per FTE in 2014 and the 195 environmental enforcement inspections per FTE in 2013.

Graph 2 gives 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

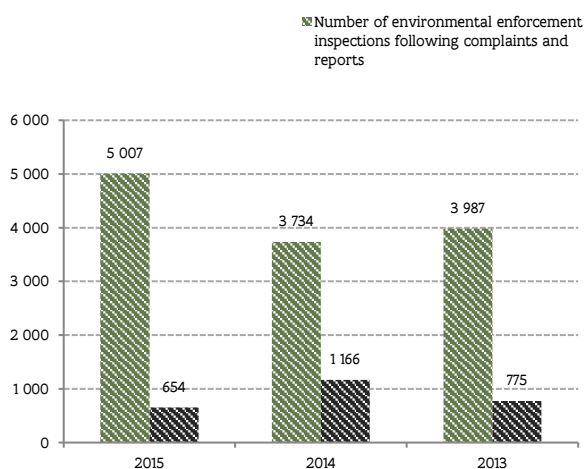
within the framework of a planned environmental enforcement campaign, in 2015.



Graph 2: Number and type of environmental enforcement inspections carried out by local police supervisors within the framework of the Environmental Enforcement Act in 2015

On the basis of the above graph, it can be concluded that there is no clear picture of whether or not enforcement is proactive in the police districts. In the smallest category of police districts, 12% of the total number of environmental enforcement inspections were carried out on their own initiative. In the category of police districts with a population between 25,000 and 49,999, 35% of the inspections were carried out on the police's own initiative. In the third category of police districts, 80% of inspections were carried out as a result of complaints and reports, and in the category of police districts with 75,000-99,999, 98% of inspections were carried out reactively. In the largest police districts, 14% of inspections were carried out on their own initiative.

Graph 3 gives an overview of the number of environmental enforcement inspections carried out in response to complaints and reports and the number of inspections carried out on their own initiative, for example as part of a planned environmental enforcement campaign, in 2015, 2014 and 2013.



Graph 3: Number and type of environmental enforcement inspections carried out by local police supervisors within the framework of the Environmental Enforcement Act in 2015, 2014 and 2013

Based on the graph above, it can be established for 2015 that 11.5% of the total of 5,661 environmental enforcement inspections carried out by local police supervisors were carried out on their own initiative. By contrast, the majority, i.e. 88.5%, were carried out in response to complaints and reports. For 2014 it can be established that 76% of the total of 4,900 environmental enforcement inspections carried out were inspections as a result of complaints and reports. This means that in 2014, almost one quarter of all inspections were carried out on their own initiative. In 2013, 16% of environmental enforcement inspections were carried out on their own initiative. A decline can therefore be observed for both 2013 and 2014, both in the percentage ratio of the total number of environmental enforcement inspections carried out and in actual numbers, for the planned inspections carried out by local police supervisors.

2.3 EVALUATION OF THE PURSUED LOCAL ENVIRONMENTAL ENFORCEMENT POLICY

2.3.1 Provincial governors

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

- ▶ the Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ 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 2015 and 31 December 2015 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 all the provincial governors. These three provincial governors all stated that they had received no requests/petitions about imposing administrative measures in 2015. Also, no administrative measures were imposed in 2015 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.

Only the Provincial Governor of the province of East Flanders received questions or requests to impose safety measures in 2015. However, it is not specified how many questions or requests were asked or what bodies addressed these questions or requests for the imposition of security measures to the Provincial Governor. No security measures were imposed by the

Provincial Governors in 2015, neither ex officio nor on request. This was also true in the preceding years.

2.3.2 Provincial supervisors (supervision pursuant to the Environmental Enforcement Decree)

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.

The provincial supervisors are authorised to supervise the following regulations:

- ▶ article 2 of the Surface Water Act, as regards category 2 and 3 non-navigable watercourses and their appurtenances, as provided for in the Act of 28 December 1967 on the non-navigable watercourses;
- ▶ article 12 para 1 of the Materials Decree, as regards the category 2 and 3 non-navigable watercourses and their appurtenances, as provided for in the Act of 28 December 1967 on the non-navigable watercourses;

the decrees implementing the law and decree referred to in points 1 and 2 with regard to the category 2 and 3 non-navigable watercourses and their appurtenances, as provided for in the Act of 28 December 1967 on the non-navigable watercourses;

- ▶ section II of chapter III of title I of the Integrated Water Policy Decree and articles 62 and 70 of the Integrated Water Policy Decree, with regard to the category 2 and 3 non-navigable watercourses and their appurtenances, as provided for in the

Act of 28 December 1967 on the non-navigable watercourses.

The provincial noise supervisors are authorised to supervise the following regulations:

- ▶ the Noise Abatement Act and its implementing decrees;
- ▶ the Environmental Permits Decree and its implementing decrees, with regard to noise aspects for establishments classified as class 2 and 3 in accordance with Annex 1 to title I of the VLAREM regulation.

In the case of establishments classified as class 1 establishments in accordance with Annex 1 to title I of the VLAREM regulation, they may, within the framework of these laws, decrees and their implementing decrees, make findings on the basis of sensory perception with regard to noise aspects and investigate cases as referred to in article 16.3.14 of the Environmental Enforcement Decree.

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 2015.

The provinces of Limburg, Flemish Brabant and West Flanders stated that no supervisors had been appointed in accordance with the Environmental Enforcement Decree. Only the province of Antwerp and the province of East Flanders had access to provincial supervisors in 2015, more specifically to 8 and 1 provincial supervisors respectively, all of which were registered with LNE-AMV. A total of 0.5 FTEs was deployed for environmental enforcement duties in the context of the Environmental Enforcement Decree by

supervisors in the province of Antwerp. In addition, 0.5 FTEs were deployed in this province for the administrative support of environmental enforcement tasks by non-supervisory bodies. The supervisor of the province of East Flanders deployed 0.05 FTEs for environmental enforcement tasks in 2015.

In 2015, 5 environmental enforcement inspections were carried out in the province of Antwerp as a result of a complaint or report, and 10 inspections on their own initiative. An infringement was found during 9 inspections and a warning was issued for 3 inspections. One priority official report was also²⁴ drawn up.

The provincial supervisor of the province of East Flanders carried out 21 inspections in 2015 on its own initiative. An infringement was found during 11 inspections and a warning was issued for 11 inspections.

²⁴ A priority official report is deemed to mean those official reports intended for determining offences stated in the protocol 'Priority

memorandum prosecution policy environmental law in the Flemish Region 2013' <http://www.vhrm.be/protocollen-0/prioriteitennota>

2.3.3 Competences of provinces regarding unnavigable watercourses (other than those included in the Environmental Enforcement Act) by appointed provincial staff (supervision not covered by the Environmental Enforcement Decree)

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

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

Until recently, the management of the non-navigable watercourses in Flanders was highly fragmented. In 2014, the Government of Flanders amended the law on non-navigable watercourses in such a way that watercourse managers can change the category of a watercourse, in mutual consultation, in order to manage them efficiently.

With a view to the more efficient management of the non-navigable watercourses – objective breakthrough 63 of the internal reform of the federated state – intensive consultations took place between provinces, municipalities, the polder and drainage authority and the Flemish Region. As a result, most municipalities transferred the management of their category 3 watercourses to the provinces in 2014.

This transfer also means that the number of provincial staff appointed to monitor the management of watercourses and surrounding areas has been increased.

Provincial authorities use their own websites as an information channel to inform citizens and raise public awareness of the regulations, rights and obligations relating to non-navigable watercourses. On the other hand, they also have a hotline for reporting issues.

The following are a selection of important focus points relating to supervision under both the law on non-navigable watercourses and the Environmental Enforcement Decree:

- ▶ do not leave grass clippings or trimmings on the banks;
- ▶ do not reinforce the banks yourself;
- ▶ do not cover the watercourse without planning;
- ▶ do not raise levels along the watercourse without planning;
- ▶ respect the distance regulations when building along the watercourse;
- ▶ no illegal dumping;
- ▶ do not use pesticides within 5 meters of the watercourse.

Provincial water-awareness employees inform the public about these focus points during field visits.

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. The mayors are competent to impose safety measures and administrative measures when:

1. there has been an infringement of article 2 or chapter IIc of the Surface Waters Act;
2. there has been an infringement of article 12, para 1 of the Materials Decree;
3. an establishment subject to a permit is operated without a permit;
4. a class 2 establishment is operated in contravention of the permit conditions;
5. a class 3 establishment is operated in breach of environmental regulations;
6. there is a violation of article 62 of the Soil Decree.

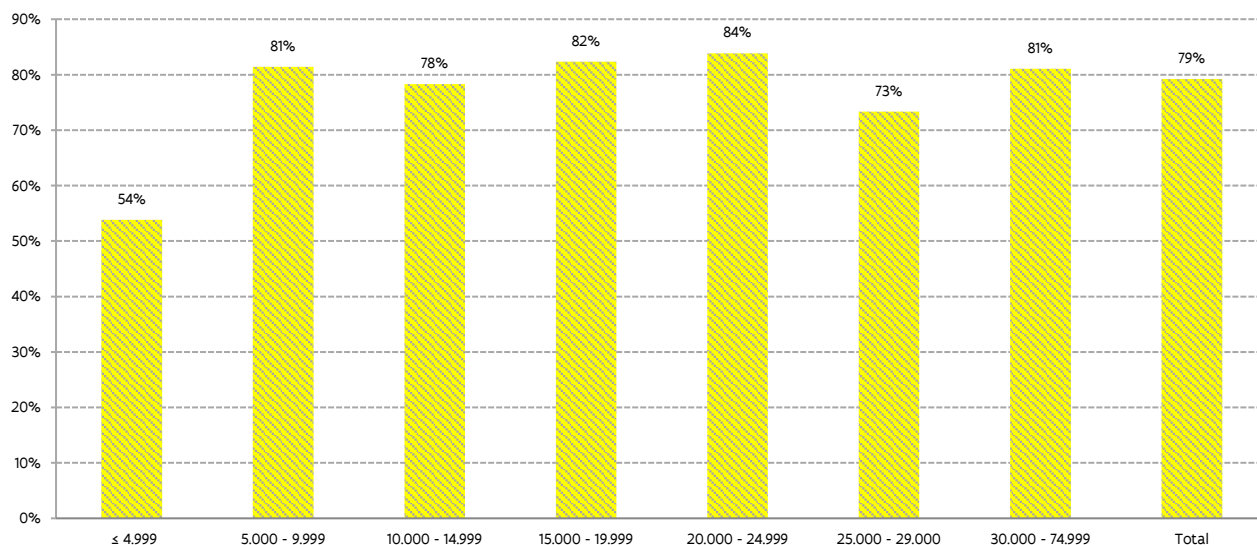
The second municipal player – the municipal supervisor – was given the same supervisory duties as the local police supervisors and the inter-municipal supervisors (see 2.2.3).

Please note that the figures below, as well as the data in 2.2.3, are presented schematically for the organisation of municipal supervision, via municipal supervisors, local police supervisors and supervisors appointed by inter-municipal associations. In practice, different ways of organising enforcement are possible. For example, the municipality may have concluded a protocol with the police district whereby the municipal environmental service deals with complaints, formulates recommendations and warnings, and the local police (or their supervisor) draws up the official reports, with or without initial preparation by the environmental officer. Various other partnerships between the municipality and, for example, the inter-municipal association are also possible. When reading and interpreting the data below, it is therefore important to bear in mind that a report such as this one – in view of the large amount of information - can only provide general overviews, and that enforcement practice is more complex and various forms of organisation are possible

2.3.4 Mayors

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 2015.

Response



Graph 4: Response rate in percentages of the mayors of the Flemish cities and municipalities per category of municipalities

The Flemish High Enforcement Council for Spatial Planning and Environment received a response from 244 mayors in the Flemish Region (out of a total of 308). This represents a response rate of 79%. Since the first environmental enforcement report (MHR2009) was published, the VHRM has seen a steady increase in the response rate. The response rate for MHR2009 was 60%, for MHR2010 almost 64%, for MHR2011 almost 73%, for MHR2013 just over 74% and for MHR2014 78%. This increasing response rate means that the data in the environmental enforcement reports are becoming increasingly representative and that a more accurate picture can therefore be given of the different facets of the local environmental enforcement landscape.

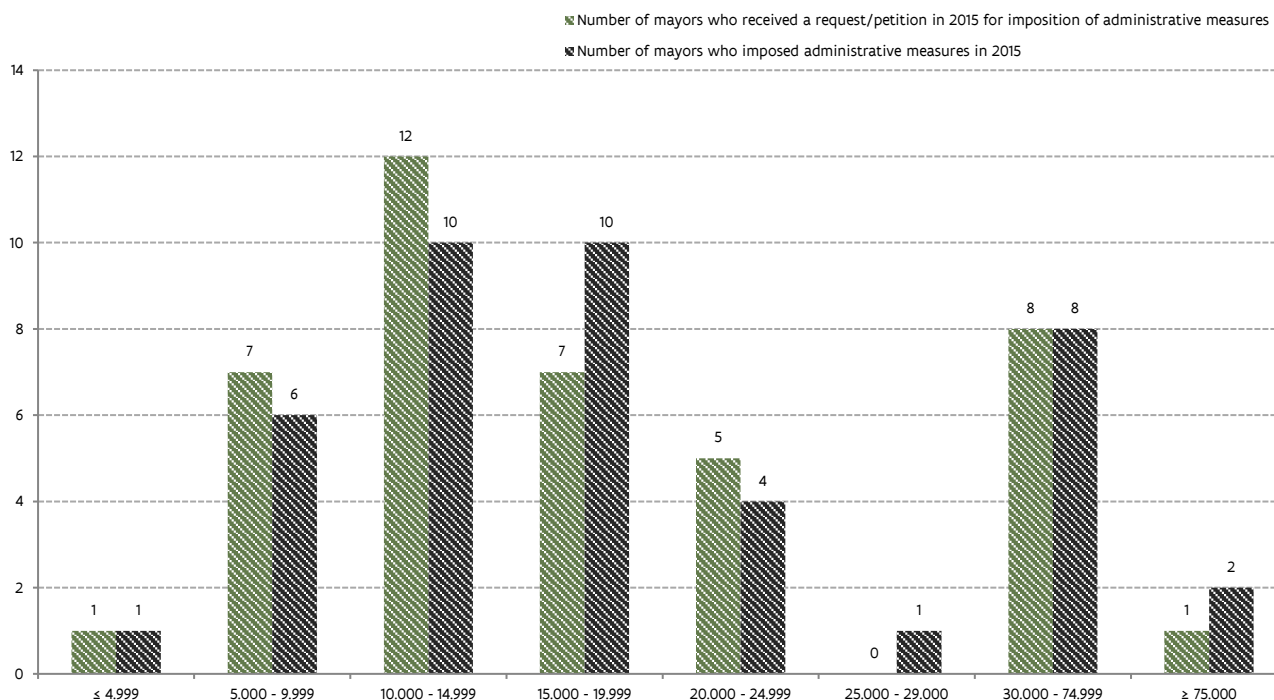
Administrative measures

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.

Administrative measures may also be taken following a request to impose such measures by persons directly affected by an environmental infringement or offence, by persons with an interest in curbing that environmental infringement or offence, and by legal persons referred to in the right of action for the protection of the environment.

Graph 5 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 2015.



Graph 5: Number of responding mayors who received a request/petition to impose administrative measures and the number of responding mayors who imposed administrative measures in 2015

Graph 5 shows that 41 of a total of 244 mayors that replied have received a question/request for the imposition of administrative measures in 2015. This means 16.8% of the mayors who replied. In addition, on the basis of the graph 5, it can be concluded that 42 mayors imposed administrative measures in 2015. This represents 17.2% of the mayors who replied. This is a slight decline compared to 2014. At that time, 22% of the responding mayors received a request/question to impose administrative measures and 23% of the responding mayors imposed administrative measures.

Table 9 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.

ADMINISTRATIVE MEASURES

Requests/petitions received by the mayor regarding the imposition of administrative measures, by:

NUMBER OF INHABITANTS	Regional supervisors	Municipal supervisors	Intermunicipal association	Police district	Provincial supervisors	Third parties	Total
≤ 4.999	1	0	0	1	0	0	2
5.000 - 9.999	2	6	1	1	0	41	51
10.000 - 14.999	1	1	1	1	1	14	19
15.000 - 19.999	0	27	0	1	0	2	30
20.000 - 24.999	1	1	0	0	0	4	6
25.000 - 29.000	0	0	0	0	0	0	0
30.000 - 74.999	1	10	0	0	0	3	14
≥ 75.000	0	0	0	0	0	1	1
Total	6	45	2	4	1	65	123
<i>2014</i>	<i>25</i>	<i>55</i>	<i>6</i>	<i>23</i>	<i>1</i>	<i>83</i>	<i>193</i>

Table 9: Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2015

In total, the mayors received 123 questions/requests concerning the imposition of administrative measures in 2015. More than half of these 123 questions/requests, i.e. 53%, were requests from third parties. In addition, municipal supervisors asked 37% of the total number of questions/requests for the imposition of administrative measures.

Compared to previous years, these 123 questions/requests represent a decline compared to the 193 questions/requests in 2014 and the 286 questions/requests to the mayors in 2013.

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.

Table 10 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.

ADMINISTRATIVE MEASURES

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

NUMBER OF INHABITANTS	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	0	1	1	0	2	0
5.000 - 9.999	5	7	1	2	15	4
10.000 - 14.999	2	20	5	2	29	1
15.000 - 19.999	3	65	1	1	70	0
20.000 - 24.999	1	5	1	0	7	0
25.000 - 29.000	0	1	1	0	2	2
30.000 - 74.999	4	11	1	0	16	1
≥ 75.000	1	2	0	0	3	0
Total	16	112	11	5	144	8
<i>in 2014</i>	<i>34</i>	<i>104</i>	<i>12</i>	<i>16</i>	<i>166</i>	<i>19</i>

Table 10: Number and type of administrative measures imposed by the mayors of the Flemish cities and municipalities in 2015

The table above shows that a total of 144 administrative measures were imposed by the mayors in 2015. This is a decline compared to the 166 administrative measures imposed by the mayors in 2014. The fact that, in 2015, only 5.5% of the total number of administrative measures imposed were not implemented within the imposed deadline is a positive trend. This is a decline compared to 11.5% in 2014.

As in 2014, the majority of the administrative measures imposed in 2015 were regularisation orders. In 2014, this ratio was close to 63% and in 2015 it even increased to 78% of the total administrative measures imposed. In addition, 11% of the total number of administrative measures in 2015 were injunctions and almost 8% administrative coercive measures.

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 11 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 2015, either on the basis of a request or at their own initiative.

SAFETY MEASURES

NUMBER OF INHABITANTS	Number of mayors who received a request for the imposition of safety measures in 2015	Number of mayors who imposed safety measures in 2015
≤ 4.999	0	0
5.000 - 9.999	2	3
10.000 - 14.999	2	5
15.000 - 19.999	4	4
20.000 - 24.999	0	0
25.000 - 29.000	0	0
30.000 - 74.999	1	1
≥ 75.000	1	1
Total	10	14
<i>in 2014</i>	<i>17</i>	<i>19</i>

Table 11: Number of responding mayors who received a request to impose safety measures and the number of responding mayors who imposed safety measures in 2015

Table 11 shows that 10 of the 244 responding mayors received a request for the imposition of safety measures. This is 7% of the total number of responding mayors. In 2014, 7% of the responding mayors received a request to impose safety measures.

The number of mayors who actually imposed a safety measure, either in response to a question or on their own initiative, is slightly higher and amounts to almost 6% of the total number of responding mayors. In 2014, 8% of the total number of responding mayors imposed a safety measure.

The mayors can impose safety measures by virtue of their office, but also following the request of a supervisor. Table 12 gives an overview of the number of requests that were submitted to the mayors in 2015 in the different categories of cities and municipalities and of which supervisors submitted these request.

SAFETY MEASURES

NUMBER OF INHABITANTS	Requests/petitions received by the mayor, by:					Total
	Regional supervisors	Municipal supervisors	Intermunicipal association	Police district	Provincial supervisors	
≤ 4.999	0	0	0	0	0	0
5.000 - 9.999	0	1	0	1	0	2
10.000 - 14.999	0	2	0	0	0	2
15.000 - 19.999	0	4	0	2	0	6
20.000 - 24.999	0	0	0	0	0	0
25.000 - 29.000	0	0	0	0	0	0
30.000 - 74.999	0	1	0	0	0	1
≥ 75.000	0	1	0	0	0	1
Total	0	9	0	3	0	12
<i>in 2014</i>	3	14	1	8	0	26

Table 12: Number of requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2015

The 10 mayors who received a request for the imposition of safety measures in 2015 received a total of 12 of these questions from municipal or local police supervisors. The majority, namely 75%, were made by municipal supervisors. The 3 requests to impose safety measures that were made by local police supervisors accounted for 1/4 of the total number of requests.

These 12 questions to impose safety measures represent a further decline compared to the 26 questions in 2014, the 38 questions in 2013 and the 33 questions that were put 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 2015, but also how many and which types of safety measures they actually imposed in that year.

Table 13 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

NUMBER OF INHABITANTS	Safety measures imposed by the mayor:								Total	It was not possible to have the measure carried out within the imposed term
	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	Combination of previous measures	other than previous measures			
≤ 4.999	0	0	0	0	0	0	0	0	0	0
5.000 - 9.999	1	1	0	0	2	2	0	6	1	
10.000 - 14.999	2	1	2	3	2	0	0	10	2	
15.000 - 19.999	2	1	1	0	4	3	2	13	0	
20.000 - 24.999	0	0	0	0	0	0	0	0	0	
25.000 - 29.000	0	0	0	0	0	0	0	0	0	
30.000 - 74.999	1	0	0	1	0	0	0	2	0	
≥ 75.000	1	0	0	0	0	0	0	1	1	
Total	7	3	3	4	8	5	2	32	4	
<i>in 2014</i>	<i>19</i>	<i>5</i>	<i>6</i>	<i>14</i>	<i>7</i>	<i>/</i>	<i>/</i>	<i>51</i>	<i>2</i>	

Table 13: Number and type of safety measures imposed by the mayors of the Flemish cities and municipalities in 2015

As the number of requests to impose safety measures fell in 2015 compared to previous years, the actual number of safety measures imposed also decreased in 2015. In 2014, 19 mayors imposed a total of 51 safety measures. In 2015, 14 mayors imposed a total of 32 safety measures. The number of security measures that have not been implemented within the imposed time limit increased. In 2014, this ratio was 4%, and in 2015, 13% was not implemented on time.

22% of the safety measures imposed in 2015 related to the stopping or the execution of operations, actions or activities, either immediately or within a certain period. In 12.5% of the cases, the safety measures involved taking, storing or removing matters vulnerable to this, including waste and animals. Prohibition order or the evacuation of certain areas, grounds, buildings or roads was imposed 8 times in 2015 as a safety measure, which is equivalent to 25%.

2.3.5 Municipal supervisors

To gain insight into the organisation and efforts regarding local environmental enforcement, the 308 Flemish cities and municipalities were asked by means of a digital questionnaire to provide information, among other things, on the appointment of supervisors, how supervision is organised in the municipality, the number of environmental enforcement inspections carried out, and 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 2015.

Response

MUNICIPALITIES

NUMBER OF INHABITANTS	Number of municipalities and cities	Number of responding municipalities and cities
≤ 4.999	13	7
5.000 - 9.999	70	57
10.000 - 14.999	83	65
15.000 - 19.999	51	42
20.000 - 24.999	31	26
25.000 - 29.000	15	11
30.000 - 74.999	37	30
≥ 75.000	8	6
Total	308	244

Table 14: Number of responding municipalities per category compared to the total number of municipalities per category in 2015

Table 14 shows that - by analogy with the response of the mayors - 244 municipalities completed the VHRM questionnaire. This is a response rate of 79% 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 2014, this was 78% in 2013, 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 2015. 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 15 shows the total number of Category 1, 2 and 3 nuisance-causing plants for 2015, 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 INHABITANTS	Number of respondents per population category	Category 1 plants			Category 2 plants			Category 3 plants			Unlicensed plants		
		Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of category 1 plants	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of category 2 plants	Total number according to survey	Average number per municipality	Number of municipalities that have no information on number of category 3 plants	Total number according to survey	Average number per municipality	Number of municipalities that do not know the number of unlicensed plants or indicated that there were no unlicensed plants
≤ 4.999	7	78	13	1	326	47	0	896	128	0	25	25	6
5.000 - 9.999	57	1.615	29	2	5.225	95	2	15.553	283	2	898	22	16
10.000 - 14.999	65	3.890	62	2	9.475	153	3	25.057	411	4	940	21	21
15.000 - 19.999	42	2.079	51	1	6.562	160	1	20.462	512	2	596	23	16
20.000 - 24.999	26	1.534	61	1	5.215	209	1	19.147	766	1	289	18	10
25.000 - 29.000	11	982	89	0	2.452	223	0	7.716	701	0	316	32	1
30.000 - 74.999	30	4.732	163	1	13.831	477	1	26.989	1.000	3	1.082	60	12
≥ 75.000	6	1.204	241	1	3.996	799	1	17.182	3.436	1	5.030	1.258	2
Total	244	16.114	69	9	47.082	200	9	133.002	576	13	9.176	57	84

Table 15: Number of nuisance-causing plants per category of municipalities in 2015

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”.

Table 15 shows that, in 2015, 235 of the total of 244 responding municipalities had a total of 16,114 Category 1 plants on their territory. On the other hand, 9 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 69 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 13 Category 1 plants, whereas this rises to 1,204 Category 1 plants in the largest category of cities.

With regard to class 2 establishments, 235 of the 244 responding municipalities together had 47,082 class 2 establishments on their territory, which represents an average of almost 200 class 2 establishments per municipality. However, the picture here also differs greatly from one class to another. The smallest municipalities had an average of 47 class establishments and the largest had an average of no less than 799. As with class 1 establishments, the number of class 2 establishments increases globally as the number of inhabitants increases. Also with regard to class 2 establishments, 9 municipalities indicated that they did not know this number.

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 5% of the number of responding municipalities. In 2015, the other

231 municipalities together had 133,002 Category 3 plants on their territory, which is 576 per municipality.

A striking fact is that no less than 160 of the responding municipalities indicated that they were aware of a total of 9,176 unlicensed establishments on their territory. As stated earlier, this concerns establishments that can be classified as a class 1, class 2 or class 3 establishment on the basis of the VLAREM regulation, but have not yet been granted a permit. This amounts to an average of more than 57 nuisance-causing and unlicensed establishments per municipality which are not really operated legitimately since no permit has been issued (yet) or no report has been made (class 3 establishments). The remaining 84 responding municipalities indicated that they did not know the number of unlicensed establishments or that they did not have unlicensed establishments on their territory. These data represent a negative evolution compared to 2014. For 2014, 106 out of a total of 240 responding municipalities had reported 2,847 unlicensed establishments on their territory, which corresponds to 27 nuisance-causing and unlicensed establishments per municipality that were not operated legitimately. This number has therefore more than doubled in 2015 compared to 2014. If we look at the absolute numbers of unlicensed establishments, we even see a threefold increase. In 2014, the municipalities reported more than 2,847 unlicensed establishments. This number increased to 9,176 reported unlicensed establishments. Table 15 shows that this problem mainly occurs in large cities (with more than 75,000 inhabitants). This information is new, given that in 2014 the average number of unlicensed establishments in this category per municipality was 18, whereas the number of unlicensed establishments in this category of municipalities increased sharply to an average of 1,258 unlicensed establishments per municipality in 2015. It is therefore quite obvious to recommend once again that these municipalities focus their enforcement efforts on these unlicensed nuisance-causing establishments. After all, these municipalities are aware of environmental legislation

breaches and could therefore be expected to take action in this respect.

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 VLAREM, or with more than thirty thousand inhabitants if the number of plants is insufficiently known, are required to have two supervisors at their disposal. This can be either municipal supervisors, or supervisors of intermunicipal associations, or police district supervisors. 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 2015.

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 2015.

APPOINTMENT OF LOCAL SUPERVISORS

	Number of municipalities		
	Without supervisors	With 1 supervisor	With ≥ 2 supervisors
> 300 Category 2 nuisance-causing plants	0	4	34
< 300 Category 2 nuisance-causing plants	12	82	103
No insight into the number of nuisance-causing plants	2	2	5
Total	14	88	142

Table 16: Appointment of local supervisors on the basis of the number of nuisance-causing plants in 2015

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 table 16 that at least 18 and at most²⁵ 20 of the responding municipalities did not have sufficient supervisors at their disposal. This is minimum 7% and maximum 8% of the total number of responding municipalities. In comparison with previous years, there is no improvement. In 2014, these figures were also a minimum of 6.5% and a maximum of 10.5%. What is striking, however, is the fact that in 2014 only 3 of the 240 responding municipalities were not yet able to use the services of a supervisor. The table above shows that, in 2015, 14 of the 244 responding municipalities did not have a supervisor at their disposal.

If the number of nuisance-causing class 2 establishments is not precisely or insufficiently known, the number of supervisors that a municipality must have at its disposal can also be determined on the basis of the number of inhabitants. The table below shows this scenario. As soon as a municipality has

²⁵ Taking into account the two municipalities that had one supervisor at their disposal and have no idea about the the number of nuisance-causing establishments on their territory. There could

potentially be more than 300 of such establishments, so they should have 2 supervisors at their disposal instead of one.

more than 30,000 inhabitants, it must have at least two supervisors at its disposal

APPOINTMENT OF LOCAL SUPERVISORS

	Number of municipalities		
	Without supervisors	With 1 supervisor	With ≥ 2 supervisors
≤ 4.999	1	4	2
5.000 - 9.999	7	26	24
10.000 - 14.999	2	27	36
15.000 - 19.999	1	21	20
20.000 - 24.999	2	5	19
25.000 - 29.000	0	2	9
30.000 - 74.999	1	3	26
≥ 75.000	0	0	6
Total	14	88	142

Table 17: Appointment of local supervisors on the basis of the population in 2015

Just like in table 16, it is apparent from table 17 that 14 municipalities did not yet have a supervisor at their disposal in 2015. This is almost 6% of the total number of responding municipalities. This is a negative trend compared to 2014 when 1.25% of the responding municipalities did not yet have a supervisor at their disposal.

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 table above shows that, within the second largest category (municipalities with a population of 30,000 - 74,999), three municipalities had only one supervisor at their disposal in 2015. This means that just over 1% of municipalities with more than 30,000 inhabitants did not yet comply with the provision that at least two supervisors must be available in 2015. In 2014, this percentage was still 13%.

In addition, we see that 14 other municipalities did not have a supervisor at their disposal. This means that a total of 17 municipalities did not yet comply with the provisions of the Environmental Enforcement Decree in 2015, which represents almost 7% of the total number of responding municipalities. This is a negative trend compared to the 3% in 2014.

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 2015, 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.

Table 18 gives an overview of the appointment and the amount of time dedicated by municipal supervisors per category of municipalities in 2015.

APPOINTMENT AND TIME DEDICATED BY MUNICIPAL SUPERVISORS

NUMBER OF INHABITANTS	Response	Municipality with appointed supervisor	Municipalities 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 the administrative support of environmental enforcement duties by non-supervisors	
≤ 4.999	7	1	1	1	1,00	0,01	0,01	0	0,01
5.000 - 9.999	57	42	7	42	1,00	4,58	3,48	1,1	0,11
10.000 - 14.999	65	50	2	58	1,16	8,78	5,73	3,05	0,15
15.000 - 19.999	42	33	1	40	1,21	7,78	5,05	2,73	0,19
20.000 - 24.999	26	21	2	30	1,43	5,1	3,43	1,67	0,17
25.000 - 29.000	11	10	0	14	1,40	4	3,25	0,75	0,29
30.000 - 74.999	30	26	1	48	1,85	12,23	9,16	3,07	0,25
≥ 75.000	6	6	0	30	5,00	15,95	12,15	3,8	0,53
Total	244	189	14	263	1,39	58,43	42,26	16,17	0,22
<i>2014</i>	<i>240</i>	<i>183</i>	<i>3</i>	<i>253</i>	<i>1,38</i>	<i>63,05</i>	<i>45,84</i>	<i>17,12</i>	<i>0,25</i>

Table 18: Appointment and amount of time dedicated by municipal supervisors per category of municipalities in 2015

A total of 263 municipal supervisors were appointed in 189 municipalities with an appointed municipal supervisor in 2015. This is an average of 1.39 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 5. It can be deduced from this that the larger the population, the more supervisors were appointed within the municipalities.

Within the municipalities that had 189 municipal supervisors at their disposal in 2015, a total of 58.43

FTEs were dedicated to environmental enforcement duties, of which approximately 72% by supervisors to environmental enforcement duties under the Environmental Enforcement Act and about 28% to the administrative support of environmental enforcement duties by non-supervisors.

The average amount of time per municipal supervisor dedicated²⁶ to environmental enforcement duties (this includes the FTEs dedicated to administrative support) amounted to 0.22 FTEs in 2015. 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 1.39 supervisors per municipality,

²⁶ The average amount of time dedicated per supervisor is the total number of reported FTEs dedicated to environmental enforcement duties per category of

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

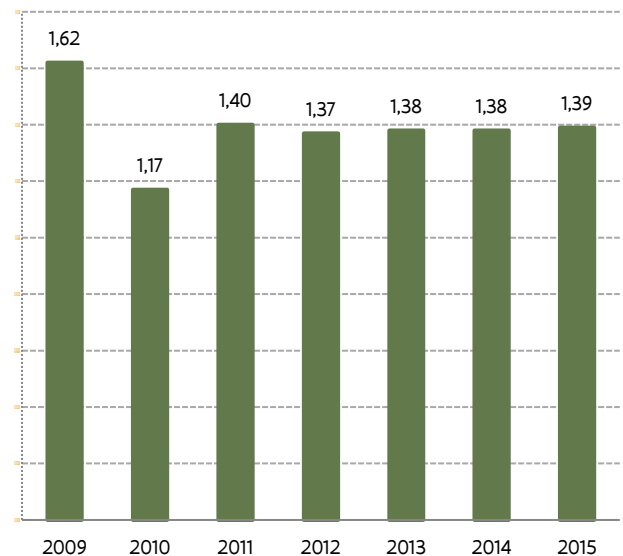
the average amount of time dedicated²⁷ to enforcement duties was 0.30 FTEs per municipality that had a supervisor at its disposal.

If we look at the different categories of municipalities separately, a great diversity can be observed, as in previous reports, with regard to both the average time spent on environmental enforcement tasks as well as the use of time.

In 2015, the average amount of time each municipal supervisor dedicated to environmental enforcement duties was 0.22 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 2.65 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 6.

Graph 6 shows that the average number of municipality supervisors has remained reasonably stable in recent years.



Graph 6: Average number of supervisors per city/municipality 2009-2015

Environmental enforcement inspections

In order to get an insight into the activities of municipal supervisors in 2015, table 19 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 19 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.

²⁷ 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.²⁸ OVAM supervisors provided support for 552 inspections carried out by other entities. The result of these inspections was not included in the OVAM reporting and is therefore unknown. The remaining 24 inspections were carried out by OVAM's supervisors.

EFFORTS RELATED TO ENVIRONMENTAL ENFORCEMENT DUTIES

NUMBER OF INHABITANTS	Response	Number of appointed 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	7	1	0,01	2	2	0,01	200
5.000 - 9.999	57	42	4,58	317	8	0,11	69
10.000 - 14.999	65	58	8,78	1025	18	0,15	117
15.000 - 19.999	42	40	7,78	612	15	0,19	79
20.000 - 24.999	26	30	5,1	412	14	0,17	81
25.000 - 29.000	11	14	4	180	13	0,29	45
30.000 - 74.999	30	48	12,23	1.162	24	0,25	95
≥ 75.000	6	30	15,95	1.387	46	0,53	87
Total	244	263	58,43	5.097	19	0,22	87
<i>in 2014</i>	<i>240</i>	<i>253</i>	<i>63,05</i>	<i>4.462</i>	<i>18</i>	<i>0,25</i>	<i>71</i>

Table 19: Efforts related to environmental enforcement duties by municipal supervisors per category of municipalities (according to population) in 2015

This table shows that the 263 municipal supervisors - who dedicated a total of 58.43 FTEs to environmental enforcement duties - together performed 5,097 environmental enforcement inspections in 2015. This is an average number of environmental enforcement inspections of 19 per supervisor and an average number of environmental enforcement inspections of almost 87 per FTE. This means that if each supervisor could focus full-time on environmental enforcement tasks, a total of 22,881 environmental enforcement inspections would be carried out by the 263 appointed municipal supervisors. Because supervisors can only spend just over 1/5 of their time on enforcement activities on average, a total of only 5,097 inspections were carried out. 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 2015, 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 20.

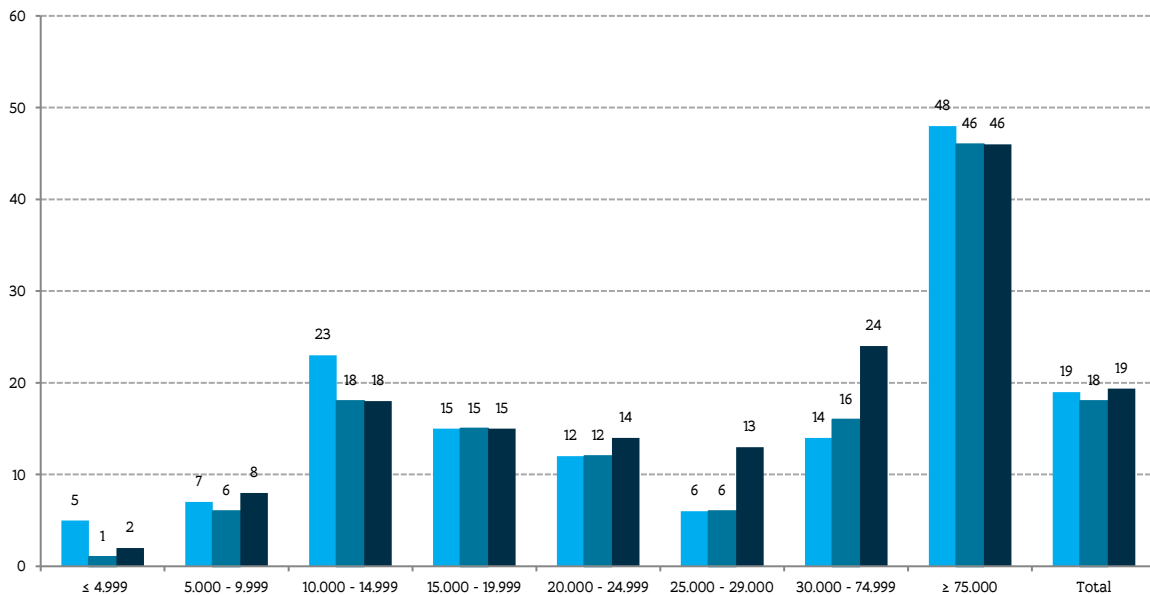
ENVIRONMENTAL ENFORCEMENT INSPECTIONS

	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	2	2	0
5.000 - 9.999	317	72	245
10.000 - 14.999	1.025	153	872
15.000 - 19.999	612	156	456
20.000 - 24.999	412	144	268
25.000 - 29.000	180	47	133
30.000 - 74.999	1.162	170	992
≥ 75.000	1.387	585	802
Total	5.097	1.329	3.768
<i>in 2014</i>	<i>4.462</i>	<i>1.379</i>	<i>3.083</i>

Table 20: 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 2015

In 2015, a total of 5,097 environmental enforcement inspections were carried out by the municipal supervisors. Almost 74% of these inspections were carried out following complaints and reports, and approximately 1/4 of these inspections were proactive inspections carried out on their own initiative, possibly within the framework of planned actions or an environmental enforcement programme. The ratio of the number of inspections carried out as a result of complaints and reports to inspections carried out on their own initiative was 69% in 2014 compared to 31%, and 65% in 2013 and 2012 compared to 35% in each year. We can therefore conclude that the percentage share of proactive inspections is falling and that municipal supervisors are working more and more reactively.

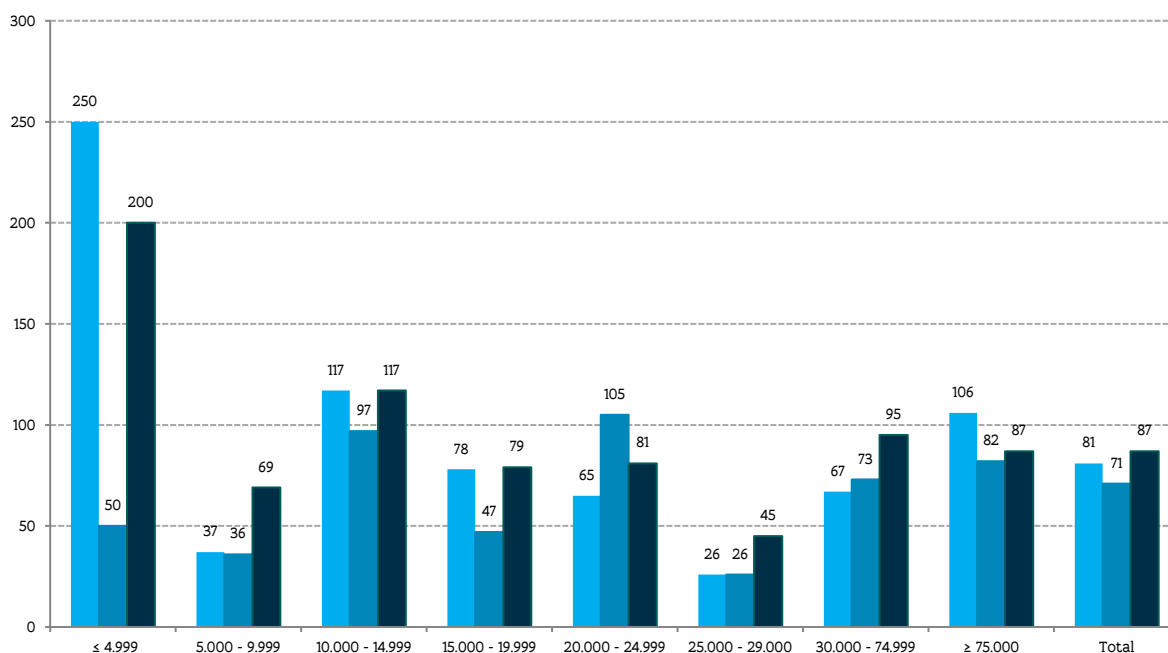
Graphs 7 and 8 provide an overview of the average number of environmental enforcement inspections per municipal supervisor and the average number of inspections per FTE in 2013, 2014 and 2015. Just like with the regional supervisors and the local police supervisors, the total number of FTEs refers to 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 7: Average number of inspections per municipal supervisor

The graph above shows that the average number of inspections per municipal supervisor has overall remained fairly stable over the last three years, with an average number of inspections of 18 to 19 per municipal supervisor. This stable trend is also visible when looking at the different categories, except for the peaks in the categories of municipalities with a population of 25,000-29,000 and 30,000-74,999, where the average number of inspections per municipal supervisor increased strongly in 2015.

However, it is more precise to make a comparison between the average number of performed environmental enforcement inspections per FTE in the municipalities in 2013, 2014 and 2015, 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 2013, 2014 and 2015 is reflected in graph 8



Graph 8: Average number of environmental enforcement inspections per FTE

The graph above shows the fluctuating character of the average number of environmental enforcement inspections per FTE in recent years, both for the total and for the various categories of municipalities. The average number of inspections per FTE increased steadily over the last three years only in the second largest class.

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.

The Flemish High Council for Spatial Planning and Environment therefore believes it is important to map

out the activities of these inter-municipal associations and has therefore digitally surveyed those inter-municipal associations that are known to have organised their environmental enforcement or are in the process of doing so.

The VHRM received a completed questionnaire for this environmental enforcement report from five inter-municipal associations. Four out of these five inter-municipal associations had appointed at least one supervisor within their association. The environmental enforcement activities of these four inter-municipal associations with an appointed supervisor will be discussed in this section.

The first inter-municipal association provides environmental enforcement support for 18 municipalities. In 2015, 3 supervisors were appointed within this inter-municipal association and 1.4 FTEs were deployed for environmental enforcement by these supervisors. In addition, 0.2 FTE of administrative support for environmental enforcement was provided by non-supervisory bodies. 121 inspections were carried out following complaints and reports. During these inspections, 1 recommendation was formulated and 110 violations were identified. 22 warnings were issued for these violations; 12 priority official reports and 1 non-priority official report were drawn up. In 2015, 1 administrative measure was also imposed with regard to an identified violation.

In the second inter-municipal association, environmental enforcement was transferred in full by 14 municipalities and in part by 6 municipalities to the inter-municipal association. Six supervisors were appointed in 2015, who together spent 0.11 FTE on environmental enforcement tasks. In addition, 0.08 FTE of administrative support by non-supervisory authorities was provided. 29 inspections were carried out following complaints and reports, for which 10 recommendations were drawn up and 17 violations were identified. Six warnings were issued and two priority and five non-priority official reports were

drawn up following the identified violations. In addition, three administrative measures were imposed, namely an injunction, administrative coercive measures and a combination of measures.

A third inter-municipal association had two levels of support for environmental enforcement, namely support for its own municipal supervisor on the one hand and the deployment of an inter-municipal supervisor on the other. Within this inter-municipal association, 5 municipalities applied for the first kind of support in 2015, while 9 municipalities applied for the second kind. In 2015, 5 inter-municipal supervisors together deployed 1 FTE for environmental enforcement tasks. In addition, 0.25 FTE of administrative support by non-supervisory bodies was also provided. A total of 96 environmental enforcement inspections were carried out in 2015, of which 37.5% were carried out proactively, on their own initiative. During these inspections, 38 recommendations were made and 41 infringements were identified. In 5 cases, no further action was taken following an identified infringement, 14 warnings were issued and 6 priority official reports were drawn up. Two regularisation orders were also imposed, although it was not possible to have them carried out within the prescribed period.

A fourth inter-municipal association carried out environmental enforcement tasks for one municipality. In 2015, 1 supervisor was appointed within this inter-municipal association, who deployed 0.1 FTE for environmental enforcement tasks, carried out 22 inspections in response to complaints and reports, and carried out 4 inspections on their own initiative. In 2015, 10 recommendations were made following the environmental enforcement inspections carried out. In addition, 24 infringements were identified during these checks. In respect of the identified violations, 10 warnings were issued and 2 priority official reports were drawn up.

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 centered 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.

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. This consideration was chosen because most of the instruments being evaluated can be used to identify an infringement.

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 various 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 21 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 21 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 2015.

INSPECTIONS

ENFORCEMENT ACTOR	Number of inspections	Number of inspections during which no breach was identified	% share 2015	Number of inspection during which a breach was identified	% share 2015
LNE - ALBON	231	189	82%	42	18%
LNE - AMI	13.305	12.745	96%	560	4%
LNE - AMV	1.764	1.693	96%	71	4%
ANB	9.531	7.599	80%	1.932	20%
AWZ	1	0	0%	1	100%
AWV	124	44	35%	80	65%
VAZG	4.585	4.169	91%	416	9%
NV De Scheepvaart (Shipping Agency)	41	0	0%	41	100%
OVAM	3.323	77	2%	3.246	98%
VLM	4.687	4.224	90%	463	10%
VMM	33	9	27%	24	73%
MOW – Division Maritime Access	0	0	0%	0	0%
Provincial supervisors	36	16	44%	20	56%
Municipal supervisors	5.097	2.654	52%	2.443	48%
Local police supervisors	5.661	3.804	67%	1.857	33%
Total	48.419	37.223	77%	11.196	23%

Table 21: Comparison between the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified' for 2015

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

- ▶ LNE-AMI indicates that several inspections may occur in relation to a single infringement, both before the infringement is effectively established and after the infringement has been established. 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. The figure for the number of inspections where no violation was detected is an overestimation for LNE-AMI. This number includes prior inspections and progress checks, while the inspections are nevertheless linked to one infringement.

A first observation that can be made on the basis of table 21 is that, in 2015, a total of 48,419 environmental enforcement inspections were carried out by regional supervisors, provincial supervisors, municipal supervisors and local police supervisors. This is a sharp increase compared with the number of environmental enforcement inspections carried out in 2014, when

36,921 environmental enforcement inspections were carried out. This increase can partly be explained by the fact that VAZG did not report any inspections for 2014 and 4,585 environmental enforcement inspections for 2015. In addition, as can also be concluded from chapter 2.1.2, a sharp increase in the number of environmental enforcement inspections carried out is also noticeable for LNE-AMI, OVAM and LNE-AMV. In addition, the number of environmental enforcement inspections carried out by local police and municipal supervisors also increased by approximately 15% in 2015 compared to 2014.

With regard to the ratio between the number of inspections where no infringement was found and the number of inspections where an infringement was found, it can be concluded that out of a total of 48,419 environmental enforcement inspections carried out, 37,223 inspections did not reveal any infringement, which amounts to 77%, while 11,196 inspections, i.e. 23%, did reveal an infringement. Despite the sharp increase in the number of environmental enforcement inspections, this ratio does not differ significantly from that in 2014 when no infringement was found in 73% of the total number of environmental enforcement inspections carried out, while an infringement was found in 27% of the cases. 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%. So for the last two years, we can observe a difference in this ratio compared to a rather constant ratio in previous years. 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 ¼ 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.

If we look at the different enforcement bodies, the picture is quite diversified. Certain bodies record a high percentage for the number of inspections where an

infringement was detected, which may indicate that these bodies maintain a high level of targeting, but may also indicate a low level of compliance. Other players, on the other hand, have fewer inspections where an infringement has been detected. Whether or not the enforcement was the result of complaints and reports may play an important role in this respect. However, it is striking that a violation was only detected in 1/3 of the inspections carried out by local police supervisors, whereas this was just the opposite in 2014, given the fact that a violation was found in 67% of the inspections at that time.

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 22 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 2015. In addition, the percentage share of these 'inspections without further action' in 2014 and 2013 is given.

INSPECTIONS WITHOUT FURTHER ACTION

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of inspections without further action	% share 2015	% share 2014	% share 2013
LNE – ALBON	42	0	0%	0%	0%
LNE – AMI	560	0	0%	0%	0%
LNE – AMV	71	11	15%	8%	0%
ANB	1.932	0	0%	0%	0%
AWZ	1	0	0%	/	0%
AWV	80	0	0%	0%	0%
VAZG	416	0	0%	/	72%
NV De Scheepvaart (Shipping Agency)	41	0	0%	/	/
OVAM	3.246	0	0%	0%	0%
VLM	463	0	0%	0%	0%
VMM	24	0	0%	0%	0%
MOW – Division Maritime Access	0	0	0%	0%	0%
Provincial supervisors	20	0	0%	0%	71%
Municipal supervisors	2.443	241	13%	5%	3%
Local police supervisors	1.857	12	0,11%	23%	3%
Total	11.196	264	2%	9%	15%

Table 22: Number of 'inspections without further action' compared to the total number of 'inspections during which a breach was identified' in 2013, 2014 and 2015

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

- ▶ LNE-AMV reports that, of the 11 inspections in which no action was taken on the basis of the infringements found, the cases in question contained insufficient evidence, concerned anonymous complaints or were not authorised by the complainant to take further data into account.

The table above shows that in 2% of the total number of environmental enforcement inspections carried out in which an infringement was found, no further action was taken with regard to the infringement found. This is an improvement on the 9% and 15% in 2014 and 2013 respectively. This evolution can be seen as very positive. This shows that an increasing number of identified violations are followed up (appropriately) using the instruments provided for supervisors by the Environmental Enforcement Decree. This could indicate that supervisors are becoming increasingly familiar with the use of these tools.

Based on the above data we can conclude – except for LNE-AMV in view of the above comment – that it is mainly local supervisors who have not taken any further action in recent years with regard to certain identified violations. 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 2014 and 2013.

INSPECTIONS WITH UNKNOWN RESULTS

ENFORCEMENT ACTOR	Total number of inspections	Number of inspections with unknown results	% share 2015	% share 2014	% share 2013
LNE – ALBON	231	0	0%	0%	0%
LNE – AMI	13.305	0	0%	0%	0%
LNE – AMV	1.764	0	0%	11%	23%
ANB	9.531	0	0%	0%	0%
AWZ	1	0	0%	/	0%
AWV	124	0	0%	45%	62%
VAZG	4.585	0	0%	/	0%
NV De Scheepvaart (Shipping Agency)	41	0	0%	/	/
OVAM	3.323	576 ²⁸	17%	0%	23%
VLM	4.687	64	1%	10%	16%
VMM	33	0	0%	96%	87%
MOW – Division Maritime Access	0	0	0%	0%	0%
Provincial supervisors	36	5	14%	0%	0%
Municipal supervisors	5.097	0	0%	1%	16%
Local police supervisors	5.661	0	0%	21%	58%
Total	48.419	645	1%	5%	12%

Table 23: Number of inspections with unknown results in 2015 and their percentage of the total number of environmental enforcement inspections carried out in 2015, 2014 en 2013

Table 23 shows that the result of some of the inspections is unknown for three environmental enforcement bodies, namely for VLM (Flemish Land Agency), provincial supervisors and OVAM (Public Waste Agency of Flanders). For the latter body, the

result was unknown for almost 1/5 of environmental enforcement inspections carried out.

In at least 645 of a total of 48,419 environmental enforcement inspections carried out, the result in 2015

²⁸ OVAM supervisors provided support for 552 inspections carried out by other entities. The result of these inspections was not included in the OVAM reporting and is therefore unknown. The remaining 24 inspections were carried out by OVAM's supervisors.

was unknown. This corresponds to 1% of the total number of inspections. This is a decline compared to 2014. At that time, the 5% result of a total of 36,921 environmental enforcement inspections carried out was unknown and this occurred for six enforcement bodies. This, in turn, was a decrease compared to 2013, when the ratio was 11.5%, which was the case for half of the enforcement bodies who responded at the time.

This improvement in recent years could indicate better 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 24 gives an overview of the application of the instrument 'recommendation' by the different supervisory actors in 2015. Additionally, the percentage share of the use of this instrument in 2014 and 2013 is also given.

RECOMMENDATIONS

ENFORCEMENT ACTOR	Number of inspections during which no breach was identified	Number of recommendations by supervisors	% share 2015	% share 2014	% share 2013
LNE – ALBON	189	16	8%	4%	16%
LNE – AMI	12.745	91	1%	1%	1%
LNE – AMV	1.693	12	1%	4%	3%
ANB	7.599	5	0%	0%	0%
AWZ	0	0	0%	/	0%
AWV	44	0	0%	0%	0%
VAZG	4.169	300	7%	/	66%
NV De Scheepvaart (Shipping Agency)	0	7	0%	/	0%
OVAM	77	0	0%	81%	0%
VLM	4.224	7	0%	1%	0%
VMM	9	0	0%	0%	0%
MOW – Division Maritime Access	0	0	0%	0%	0%
Provincial supervisors	16	0	0%	0%	0%
Municipal supervisors	2.654	2.236	84%	84%	124%
Local police supervisors	3.804	2.478	65%	18%	126%
Total	37.223	5.152	14%	7%	12%

Table 24: 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:

- ▶ VLM stated that it had drawn up 7 recommendations in 2015. Advice from inspectors is often not implemented as it is given when no infringement has taken place, or when they are not authorised to act against the identified infringement. Sometimes a recommendation is listed together with a warning and only the warning is implemented in the follow-up system. Oral advice is not tracked by VLM.

The table above shows that a total of 5,152 recommendations were drawn up out of a total of 37,223 inspections for which no violation was found. This equates to 14%. In 2014, a recommendation was drawn up for 7% of the total number of inspections carried out in which no violation was found. This increase is due to the sharp increase in the number of recommendations formulated in 2015, in view of the fact that the number of environmental enforcement inspections in which no violation was observed also increased compared to 2014, namely by more than 38%. In fact, a total of 1,895 recommendations were drawn up in 2014, out of a total of 26,892 inspections in which no violation was found. This means that the number of formulated recommendations increased by 172%.

This increase is mainly due to the increase in the number of recommendations (absolute number and percentage in relation to the number of inspections in which no violation was found) from local police supervisors. In 2015, 2,478 recommendations were formulated for 3,804 inspections in which no violation was found, which means that in more than half of the number of inspections in which no violation was found, the local police supervisors took preventive action by formulating recommendations in order to prevent an imminent environmental infringement or an environmental crime. In 2014, 18% of the inspections in which no violation was found received a recommendation, compared to 126% in 2013.

As in previous years, we observe among municipal supervisors a high percentage of recommendations for inspections in which no violations were found. This means that the data for 2015 also show a distinction between the regional supervisory authorities on the one hand and the municipal supervisors and the local police supervisors on the other. Regional supervisory bodies use the instrument 'recommendation' to a far lesser extent than municipal and local police supervisors

Two notable findings can be made for the regional supervisory authorities:

- ▶ In 2014, OVAM still used the recommendation instrument in 4/5 of the total number of inspections in which no infringement was detected, while in 2015, as in 2013, the instrument was no longer used at all by the supervisors of OVAM.
- ▶ The figures for De Scheepvaart NV (Shipping Agency) explicitly show that the recommendation instrument can also be used for those inspections in which a violation was found (see above). In fact, De Scheepvaart NV did not report any inspections in which no violation was found. Supervisors of De Scheepvaart NV thus formulated 7 recommendations for inspections in which an infringement was established, in combination with the use of other instruments such as warnings and official reports (see 3.5 and 3.6).

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 25 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 2015. These figures were given by the different environmental enforcement actors. This percentage ratio is also given for 2014 and 2013 for purposes of comparison.

EXHORTATIONS

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of exhortation by supervisors	% share 2015	% share 2014	% share 2013
LNE – ALBON	42	42	100%	110%	100%
LNE – AMI	560	1.681	300%	339%	161%
LNE – AMV	71	59	83%	32%	17%
ANB	1.932	1.155	60%	57%	60%
AWZ	1	1	100%	/	0%
AWV	80	0	0%	0%	0%
VAZG	416	416	100%	/	5%
NV De Scheepvaart (Shipping Agency)	41	41	100%	/	-
OVAM	3.246	2.506	77%	58%	37%
VLM	463	210	45%	27%	20%
VMM	24	24	100%	0%	7%
MOW – Division Maritime Access	0	0	0%	0%	0%
Provincial supervisors	20	14	70%	0%	0%
Municipal supervisors	2.443	1.670	68%	39%	36%
Local police supervisors	1.857	1.284	69%	14%	11%
Total	11.196	9.103	81%	47%	30%

Table 25: 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 remark should be taken into account:

- ▶ LNE-AMI makes the same comment for the number of warnings it reports as the comment on the number of inspections where a violation was detected as indicated in 3.1 Inspections where an infringement was found.

Table 25 shows that warnings were a widely used instrument in 2015. A warning was issued in more than 4/5 of all inspections. This represents an increase in the use of this instrument compared to 2014 and 2013, when the ratio was 47% and 30% respectively. This increase is mainly due to the increase in the number of issued warnings because the number of inspections in which an infringement was detected increased by only 13% in 2015 compared to 2014, while the absolute

number of warnings almost doubled in 2015 compared to the 4,635 warnings issued in 2014.

In addition, the data above show that every body that carried out inspections in which an infringement was detected, with the exception of AWV, used the warning instrument and that the use of this instrument by some bodies has remained fairly stable in recent years (LNE-ALBON, ANB) and has even increased considerably for most bodies (municipal supervisors, local police supervisors, OVAM, LNE-AMV, etc.). For each player, with the exception of VLM and AWV, the instrument was used in more than 60% of the total number of inspections in which a violation was found. Many bodies even used the instrument for every infringement found. In anticipation of the figures in the following chapters, it even appears that several players prefer to draw up a warning for an established infringement rather than formulate an official report or an incident report for the infringement. In the case of LNE-ALBON, for example, we see that 42 warnings, only one incident report and not a single official report were issued for the 42 inspections in which an infringement was detected. The VAZG supervisors also formulated 416 warnings for 416 inspections in which violations were found. However, no incident reports nor official reports were drawn up. OVAM's supervisors formulated 2,506 warnings during 3,246 inspections in which an infringement was detected, but only 41 official reports and 46 incident reports were drawn up.

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 26 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 2014 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.

IDENTIFICATION REPORT

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of identification reports by supervisors	% share 2015	% share 2014	% share 2013
LNE – ALBON	42	1	2%	0%	0%
LNE – AMI	560	13	2%	4%	1%
LNE – AMV	71	2	3%	0%	0%
ANB	1.932	85	4%	1%	0%
AWZ	1	0	0%	/	0%
AWV	80	0	0%	0%	0%
VAZG	416	0	0%	/	0%
NV De Scheepvaart (Shipping Agency)	41	0	0%	/	/
OVAM	3.246	46	1%	2%	20%
VLM	463	0	0%	0%	0%
VMM	24	0	0%	0%	0%
MOW – Division Maritime Access	0	0	0%	0%	/
Provincial supervisors	20	0	0%	0%	0%
Municipal supervisors	2.443	40	1,64%	<1% ²	0%
Local police supervisors	1.857	12	0,65%	<1% ²	0%
Total	11.196	199	2%	1%	1%

Table 26: Number of 'identification reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'

Compared to the other instruments, it can also be observed for 2015 that in general the incident report instrument is not used often. However, a slight increase in use can be observed in 2015. This increase is also mainly due to the increase in the absolute number of incident reports compared to 2014, given that the number of inspections where an infringement was detected increased by 13% in 2015 and the number of incident reports by 237%. This increase in the number of incident reports can be explained by the increased use of the instrument by those enforcement bodies that had already used it in previous years, which means that those who already use the incident report to deal with identified environmental infringements are increasingly doing so. In addition, the increase could be explained by the fact that several violations were decriminalised. Only OVAM drew up fewer incident reports in proportion to the number of inspections in which an infringement was found. However, this is due to the sharp increase in these inspections in which an infringement was detected, given that in absolute numbers more incident reports were drawn up in 2015 compared to 2014, i.e. 46 compared to 6.

As mentioned earlier, the increase in the number of incident reports does not necessarily indicate that the number of environmental infringements detected in 2015 may also have increased. After all, supervisors are free to decide whether or not they draw up an incident report for the identified environmental infringement.

In advance of the figures in the next chapter, a discrepancy can be found for 2015 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 (LNE-AMMC) of the Department of Environment, Nature and Energy. Table 26 shows that the regional supervisors drew up 147 incident reports in 2015. However, LNE-AMMC reported having received only 124 incident reports from these

regulatory bodies. The municipal supervisors compiled a total of 40 incident reports in 2015, while LNE-AMMC stated that it had received only 7 incident reports from municipal supervisors. Local police supervisors also stated that they had drawn up a total of 12 incident reports, while LNE-AMMC received only 6 of them.

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 2014 and 2013.

instrument. The assessment of the number of official reports drawn up in relation to the number of inspections in which a violation was found does not provide an entirely accurate picture of how effective environmental violations are established. 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.

The limitations of the available figures also apply here just like in the discussion of the 'incident report'

OFFICIAL REPORT

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of official reports	% share 2015	% share 2014	% share 2013
LNE – ALBON	42	0	0%	0%	1%
LNE – AMI	560	560	100%	100%	56%
LNE – AMV	71	16	23%	4%	0%
ANB	1.932	692	36%	43%	40%
AWZ	1	0	0%	/	0%
AWV	80	80	100%	55%	38%
VAZG	416	0	0%	/	0%
NV De Scheepvaart (Shipping Agency)	41	41	100%	/	/
OVAM	3.246	41	1%	21%	15%
VLM	463	182	39%	21%	18%
VMM	24	3	13%	4%	7%
MOW – Division Maritime Access	0	0	0%	0%	0%
Provincial supervisors	20	1	5%	200%	29%
Municipal supervisors	2.443	432	18%	9%	9%
Local police supervisors	1.857	842	45%	30%	18%
Total	11.196	2.890	26%	28%	17%

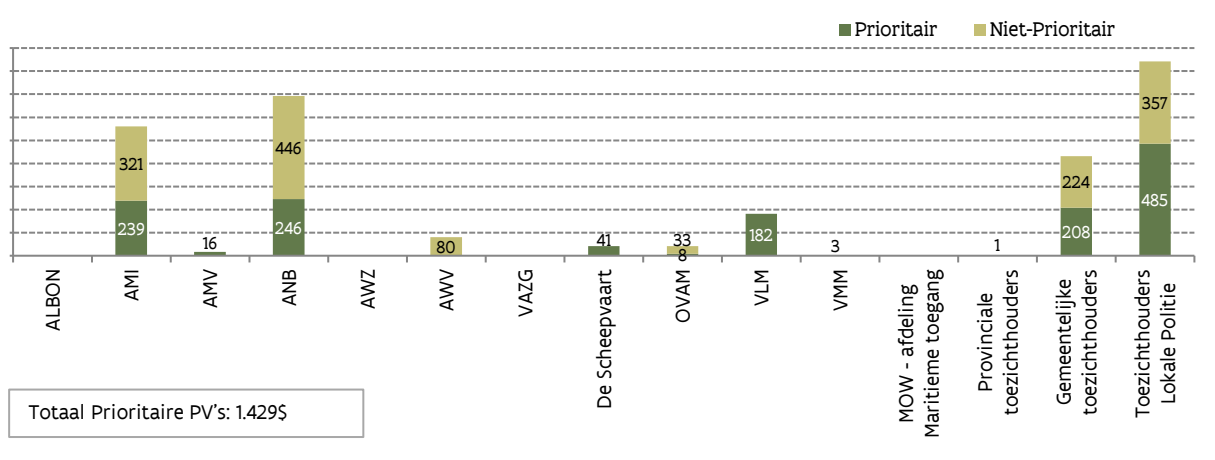
Table 27: Number of 'official reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'

In 2015, an official report was drawn up for 2,890 of the total of 11,196 inspections during which a breach was identified. This is a percentage of 26%. Compared to 2014, a slight percentage decrease in the number of inspections in which official reports were drawn up can be noted, despite the fact that the number of

official reports drawn up in absolute numbers increased from 2,796 in 2014 to 2,890 in 2015. This can be explained by the fact that the number of inspections in which an infringement was detected rose by 13% in 2015, while the absolute number of official reports rose by 3% compared to 2014.

As in the previous reports, the data in table 27 point to the existing pragmatic approach of article 29 of the Criminal Procedure Code, which stipulates that an official report must be drawn up when a crime is established and that this official report must be submitted to the Public Prosecutor. Taking into account the limitations of the figures and the fact that the identified violations could also constitute environmental offences, we may conclude that the majority of the enforcement bodies also use other instruments, as already demonstrated in the section on warnings, than the official report in order to achieve the intended objective, without always having to initiate criminal proceedings. 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 2015 also asked for a breakdown between the number of priority and non-priority official reports. The following graph shows this relationship.



Graph 9: Ratio between priority and non-priority official reports in 2015

Graph 9 shows a ratio, with regard to the total number of official reports drawn up in 2015, of 49% priority official reports against 51% non-priority official reports. In 2014 and 2013, this ratio was 55% and 45% respectively. In general, we can therefore conclude that approximately half of the official reports drawn up are categorised by the supervisors as priorities in the context of the Priorities Memorandum.

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.

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 16.4.2 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 these measures.

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 28 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 2015. This percentage is again given, for comparison, for 2014 and 2013.

ADMINISTRATIVE MEASURE

ENFORCEMENT ACTOR	Number of inspections during which a breach was identified	Number of administrative measures by supervisors	% share 2015	% share 2014	% share 2013
LNE - ALBON	42	0	0%	0%	0%
LNE - AMI	560	21	4%	4%	2%
LNE - AMV	71	0	0%	0%	0%
ANB	1.932	221	11%	9%	12%
AWZ	1	0	0%	/	0%
AWV	80	0	0%	0%	0%
VAZG	416	0	0%	/	0%
NV De Scheepvaart (Shipping Agency)	41	41	100%	/	/
OVAM	3.246	22	1%	6%	4%
VLM	463	8	2%	1%	1%
VMM	24	1	4%	0%	0%
MOW – Division Maritime Access	0	0	0%	0%	0%
Provincial supervisors	20	0	0%	0%	0%
Municipal supervisors	2.443	188	8%	6%	6%
Local police supervisors	1.857	83	4%	2%	5%
Total	11.196	585	5%	5%	4%

Table 28: Number of imposed administrative measures compared to the number of inspections during which a breach was identified in 2013, 2014 and 2015

In 2015, a total of 585 administrative measures were imposed by the supervisors. This is an increase compared to the 447 administrative measures imposed in 2014, but a decrease compared to the 626 administrative measures imposed in 2013. In terms of percentage and compared to the number of inspections where a violation was found, the number of imposed administrative measures remained approximately the same in recent years.

As in previous years, the table above shows that not all enforcement bodies make use of the administrative measures instrument. The majority of imposed administrative measures were imposed by ANB (Agency for Nature and Forests), i.e. 38%, followed by municipal supervisors, who imposed 32% of the total number of administrative measures imposed in 2015. In 2015, De Scheepvaart NV imposed as many

administrative measures as the number of inspections in which a violation was found.

Table 29 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 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:

- ▶ 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 29 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 29, together with the total number of imposed administrative measures.

Since 2014, regional supervisors can impose an administrative penalty payments together with administrative measures in the event that the administrative measures are not implemented or are not implemented in time. The regional supervisors were therefore asked in how many cases the imposed administrative measures were linked to an administrative penalty payment and in how many cases this administrative penalty payment was actually collected. The following table shows this.

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		In how many cases was the imposed AM linked to an administrative penalty payment?	In how many cases has this administrative penalty payment been collected?
	#	%	#	%	#	%	#	%	#	%	#	%	#	#
LNE - ALBON	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LNE - AMI	6	29	13	62	0	0	2	10	3	14	0	0	0	0
LNE - AMV	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ANB	12	5	104	47	90	41	15	7	2	1	27	12	4	1
AWZ	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AWV	0	0	0	0	0	0	0	0	0	0	0	0	0	0
VAZG	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NV De Scheepvaart (Shipping Agency)	0	0	0	0	0	0	41	100	0	0	34	83	0	0
OVAM	0	0	5	23	17	77	0	0	0	0	4	18	0	0
VLM	2	25	5	63	0	0	1	13	0	0	2	25	0	0
VMM	0	0	1	100	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	0	0
Provincial supervisors	0	0	0	0	0	0	0	0	0	0	0	0	/	/
Municipal supervisors	54	29	85	45	15	8	34	18	49	26	48	26	/	/
Local police supervisors	23	28	45	54	9	11	6	7	1	1	19	23	/	/
Total	97	17	258	44	131	22	99	17	55	9	134	23	4	1

Table 29: Types of administrative measures imposed in 2015

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

- ▶ LNE-AMV states that the number of reported administrative measures refers to inspections that were started and completed in 2015. In addition to the measures pursuant to the Environmental Enforcement Decree, LNE-AMV also imposes measures that are regulated by the VLAREL regulation. In this context, two suspension procedures were launched and 67 plans of action were imposed on laboratories.

- ▶ The Environmental Inspectorate Division (LNE-AMI) stated that it was not possible for them 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 29 shows that the majority of the total of 585 administrative measures imposed in 2015 were regularisation orders, namely 44% of the total of imposed administrative measures. During previous years too, this was the most used type of administrative measure. In 2014, 63% and in 2013 68% of the total number of administrative measures imposed were still regularisation orders.

Noteworthy is the sharp increase in the number of times the administrative measure was an administrative coercive measure, both in percentage terms in relation to the total number of imposed administrative measures and in absolute numbers. This instrument was used 28 times in 2013 and 29 times in 2014, resulting in a percentage ratio of 4% and 6% respectively of the total number of imposed administrative measures. In 2015, the administrative measure was an administrative coercive measure no less than 131 times, which means that more than 1/5 of the total number of administrative measures involved administrative coercion.

A total of 97 injunctions were issued in 2015, representing 17% of the total number of imposed administrative measures. In 2014, this instrument was used 81 times, which represents 18% of the total number of imposed administrative measures. In 2013, this ratio was 16%.

About 9% of the total number of administrative measures were imposed following a petition. This is an increase compared to 4% in 2014 and 7% in 2013.

The data in table 29 show that it was impossible for no less than 134 of the total of 585 imposed administrative measures to have these measures carried out within the imposed term. This comes down to 23%, which is also an increase in this ratio compared to 2014 and 2013. In 2014, it was indeed not possible to have 15% of the total of imposed

administrative measures carried out within the imposed term and in 2013 it amounted to 13%. These figures show that it is becoming increasingly difficult to ensure that an imposed administrative measure is implemented on time. This is particularly noticeable for De Scheepvaart NV, VLM, municipal supervisors and local police supervisors.

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. In 2015, only 4 administrative measures were linked to an administrative penalty payment. In one case, the administrative penalty payment was also effectively collected. Only the ANB (Agency for Nature and Forests) made use of the administrative penalty payment instrument in 2015.

The administrative penalty payment instrument can only be used by regional supervisors. The data above show that approximately $\frac{1}{4}$ of administrative measures imposed by local police supervisors and by municipal supervisors are not carried out within the required period. On the basis of this information, it could be recommended that local supervisors should also be able to use this new penalty payment instrument.

3.8.2 Appeals against decisions to impose administrative measures

Number of appeals lodged against decisions regarding administrative measures and against the administrative penalty payment and decisions relating thereto

Article 16.4.17 of DABM provides that a person on whom administrative measures have been imposed, including administrative penalty payments, may appeal to the minister against a decision regarding administrative

measures, including administrative penalty payments that may have been imposed. The appellant may also lodge an appeal against the administrative penalty payment alone. The appeal must be submitted to the minister at the address of the Department of Environment, Nature and Energy, the Environmental Enforcement, Environmental Damage and Crisis Management department (LNE-AMMC) within fourteen days of the notification of the decision regarding the administrative measures or the administrative penalty payment.

In 2015, 43 appeals were lodged with the Minister against decisions to impose administrative measures. This is a decline compared to the 60 appeals in 2014, despite the increase in the number of administrative measures imposed in 2015 compared to 2014, but an increase compared to the 38 appeals cased in 2013. The percentage of appeals decreased in 2015 compared to 2014, which in turn was a strong increase compared to 2013. In fact, the percentage of appeals in 2013 was 6%, in 2014 it rose to 13%, before falling to 7% in 2015.

In 2015, no appeals were lodged against decisions relating to administrative measures that were linked to an administrative penalty payment, nor against administrative penalty payments alone.

Of the 43 submitted appeals in 2015, 18 files were related to environmental hygiene and 25 to environmental management.

LNE-AMMC is responsible for preparing the appeal case; in other words, LNE-AMMC examines its admissibility, organises a hearing if necessary and formulates a recommendation for the minister. The figures obtained via the LNE-AMMC survey reveal that four appeals were declared inadmissible and 39 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 30 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 2015, 2014 and 2013.

APPEALS

	2015	2014	2013
Total number of admissible appeals	39	52	32
Decision by the Minister within the term laid down by the Flemish Parliament Act	36	45	28
Number of times the minister asked for an extension of the term/Number of cases in which the minister has not yet made a decision because the term was still running at the time of reporting	3	7	3
Number of appeals declared well-founded	5	14	3
Number of appeals declared partially well-founded	9	12	5
Number of appeals declared unfounded	15	15	18
Number of appeals declared devoid of purpose	7	4	2

Table 30: Comparison of the decision of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2015, 2014 and 2013

Table 30 shows that in 2015 a decision about the 36 admissible appeals was always reached within the term laid down by Flemish Parliament Act. For the other 3 appeal files, the term within which the minister

must reach a ruling had not lapsed when this report was made.

The majority of the minister's decisions in 2015, i.e. 42%, concerned an unfounded statement of grounds,

while 1/4 were partially justified and 14% justified in full. Moreover, 19% of the minister's decisions concerned appeals devoid of purpose²⁹ In 2014 and 2013, the minister's decisions concerned appeals justified in full in 31% and 11% of cases respectively; 27% and 18% justified in part; 33% and 64% of appeals were based on an unfounded statement of ground. In addition, 9% and 7% respectively of the minister's decisions were devoid of purpose. It can be observed that, in recent years, the majority of the minister's decisions on admissible appeals concerning administrative measures have been based on an unfounded statement of grounds.

Table 31 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 2015 as 2014 and 2013.

ADMINISTRATIVE MEASURE

TYPE	2015	2014	2013
Prohibition order	5,15%	15%	9,18%
Regularisation order	12,40%	16%	4,25%
Administrative coercion	1,53%	10%	14,29%
Combination of the administrative measures stated	4,04%	0%	9,21%

Table 31: Percentage share of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, in 2015, 2014 and 2013

Table 31 shows that appeals in 2015 were largely lodged against the regularisation orders. Appeals were lodged 32 times against a total of 258 prohibition orders imposed in 2015.

As regards the imposed injunctions and administrative coercive measure, the number of appeals in 2015 was significantly lower than in the previous two years. For example, 5 appeals were lodged out of a total of 97 imposed injunctions, and only 2 times with regard to the total of 131 administrative measures that involved an administrative coercive measure.

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

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

²⁹ The difference between an inadmissible appeal and an appeal devoid of purpose can be illustrated by a few examples. An inadmissible appeal does not meet the conditions for admissibility. For example, the time limits for appeal were not respected or a copy of the contested decision was not attached to the appeal case. Appeals declared devoid of purpose, for example, appeals in which

the administrative measure was lifted by the supervisor himself, after all the conditions contained in the decision on administrative measures had been met by the offender. The purpose of the appeal no longer exists because the offender has amended his situation but *after* the appeal has been declared admissible.

Table 32 gives an overview of the number of appeals lodged against refused petitions to impose administrative measures.

ENVIRONMENTAL ENFORCEMENT INSPECTIONS

	2015	2014	2013
Total appeals against rejected petitions for imposing administrative measures	5	10	7
Number of appeals declared admissible	3	8	5
Number of appeals declared well-founded	2	0	0
Number of appeals declared partially well-founded	/	0	2
Number of appeals declared unfounded	1	5	1
Number of appeals declared devoid of purpose	0	1	/
Appeals for which a decision was reached within the period of 60 days laid down by the Flemish Parliament Act	3	7	0

Table 32: Number of appeals lodged against refused petitions for the imposition of administrative measures in 2015, 2014 and 2013

Table 32 shows that, in 2015, 5 appeals were lodged against refused petitions for the imposition of administrative measures, all relating to environmental hygiene. This is a decline compared to 2014 and 2013 when 10 and 7 such appeals were lodged.

60% of the appeals lodged in 2015 were declared admissible. This means that two appeals were declared inadmissible. Two out of three admissible appeals were declared to be justified and 1 was dismissed as unfounded.

For all 3 admissible appeals, the decision was taken within the 60-day period laid down in the decree.

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 safety³⁰. 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 33 gives an overview of the number and type of imposed safety measures, broken down by environmental enforcement actor, in 2015. 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 33. In addition, the table shows the total number of safety measures, per actor, for 2014 and 2012.

³⁰ 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	Other	Combination	Total 2015	Total 2014	Total 2013	It was not possible to have the measure carried out within the set term
LNE - ALBON	0	0	0	0	0	0	0	0	0	0	0
LNE – AMI	0	0	0	0	0	0	1	1	2	0	0
LNE – AMV	0	0	0	0	0	0	0	0	0	0	0
ANB	0	0	0	0	0	0	0	0	0	3	0
AWZ	0	0	0	0	0	0	0	0	0	0	0
AWV	0	0	0	0	0	0	0	0	0	0	0
VAZG	0	0	0	0	0	0	0	0	/	0	0
NV De Scheepvaart (Shipping Agency)	0	0	0	41	0	0	0	41	21	18	0
OVAM	0	0	0	16	0	0	0	16	0	0	0
VLM	1	0	0	0	0	0	0	1	0	2	1
VMM	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
Provincial supervisors	0	0	0	0	0	0	0	0	0	0	0
Municipal supervisors	13	3	1	5	5	2	0	29	53	62	3
Local police supervisors	5	2	2	12	9	5	7	42	21	41	5
Total	19	5	3	74	14	7	8	130	97	126	9
in 2014	40	8	4	36	7	/	/	97			13
In 2013	58	15	10	37	6	/	/	126			18

Table 33: Nature of the imposed safety measures

To place the data of table 33 in perspective or to interpret them, the following remark should be taken into consideration:

- ▶ LNE-AMI indicated that it was not possible to give a clear answer to the question concerning the number of cases in which it was not possible to have the measure implemented within the imposed time limit. The adoption/implementation of safety measures does not always coincide with the calendar years. A safety measure often consists of several actions to be taken by the company that cannot all be taken care of at the same time; nor can all measures be checked immediately after the expiry of the term, etc. As a result, it is not possible for LNE-AMI to report on this clearly and accurately and LNE-AMI does not wish to provide figures for this.

A total of 103 safety measures were imposed in 2015. This is an increase compared to the 97 safety measures imposed in 2014 and the 126 safety measures imposed in 2013.

The majority, i.e. 32% of the total number of imposed safety measures, are imposed by municipal supervisors, as in previous years. In 2015, the supervisors of De Scheepwater NV imposed almost as many safety measures as the municipal supervisors, namely 41. The local police supervisors imposed 29 safety measures in 2015. Besides De Scheepvaart NV, only two regional supervisory authorities imposed safety measures in 2015, namely OVAM and LNE-AMI.

In 74 out of a total of 130 imposed measures, the safety measure involved confiscating, storing or removing of sensitive items, including waste and animals; in almost 15% of cases, the suspension or execution of works, operations or activities; and in almost 11 cases, the safety measure involved a prohibition or evacuation of certain areas, grounds, buildings or roads.

The data show that in 2015 almost 7% of the total number of safety measures imposed were not implemented within the imposed deadline. In 2014 and 2013, 13% and 14% respectively of the total number of safety measures imposed were still not implemented within the imposed deadline.

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 benefits³¹. To this end, a distinction was made between environmental offences and environmental infringements. The latter are fairly minor violations with a limited impact on man or the environment, and they are listed exhaustively by the Government of Flanders in the appendices to the implementing decree of the Environmental Enforcement Decree³². 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 LNE-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 LNE-AMMC of this in due time, the environmental offence can be penalised by the LNE-AMMC with an alternative administrative fine. The decision of the Public Prosecutor whether or not to prosecute the case is made on the basis of the 'Sorting Memorandum'. The objective of the Sorting Memorandum of the Public Prosecutor's Office is to determine, on the basis of, among other things, social relevance, a number of technical-legal, legal-economic, criminological and practical considerations, which cases will be dealt with under criminal law by the public prosecutors themselves and which cases will be submitted to LNE-AMMC for administrative fines, so that every official report is properly dealt with.

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 LNE-AMMC. The LNE-AMMC can impose an exclusive fine, possibly accompanied by a deprivation of benefits. After receiving the identification report, the LNE-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 LNE-AMMC is informed of this extension. Both a decision to

³¹ 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).

³² 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).³³ Publication Belgian Official Journal 22 May 2012.

subject an environmental offence to criminal proceedings and a public prosecutor's failure to communicate his or her decision to the LNE-AMMC in due time rule out the imposition of an administrative fine.

If the public prosecutor has informed the LNE-AMMC in due time of his or her decision not to prosecute the environmental offence, the LNE-AMMC must start the procedure for a possible imposition of an alternative administrative fine. Upon receipt of this decision, LNE-AMMC is to notify the suspected offender within 30 days of its intention to impose an alternative fine (which may or may not include the expropriation of unlawful material benefits). LNE-AMMC then has 180 days to decide whether or not to impose an alternative administrative fine (which may or may not include the expropriation of unlawful material benefits). 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 LNE-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 nature³³, 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 2012³⁴. To impose an alternative or exclusive administrative fine, LNE-AMMC may put forward a proposal for a sum to be paid in certain "simpler cases" in the area of environmental offences or environmental infringements with a limited impact on the natural environment. If the offender does not pay this type of 'amicable settlement' in time, the regular procedure for the imposition of fines is resumed. This 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 2015, we will not only look at the activities of the public prosecutor's offices, but also at those of the LNE-AMMC, the Environmental Enforcement Court and the Flemish Land Agency.

³³ Publication Belgian Official Journal 22 May 2012.

³⁴ 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 2015. 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 of 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 prosecutors³⁵.

The VHRM requested figures regarding the level of environmental enforcement in Flanders. The figures they received therefore only relate to cases handled by the Flemish public prosecutor's offices. The data are now presented on the basis of the new judicial

landscape, but in order to maintain comparability with data from previous years, the data are presented at both the district and the departmental levels where appropriate.

The provided figures are based on the latest data extraction on 10 January 2016. All data relating to the progress of a case are therefore limited to the situation on that extraction date.

It should be pointed out that it is still too early to draw conclusions based on the data extracted on 10 January 2016 about the different ways in which the cases registered in 2015 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. A main indictment code must therefore be assigned to the case as soon as it is entered in the public prosecutors' computerised system. However, this registration of additional indictment codes does not occur everywhere; some public prosecutor's offices do not register them.

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)

³⁶.

³⁵ 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.

³⁶ 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 -

- ▶ Nature protection law:
 - ▶ 63A - Hunting
 - ▶ 63B - Fishing
 - ▶ 63M - Flemish Parliament Act on Forests
 - ▶ 63N - Washington Convention - protected animal species, plants and ivory
 - ▶ 64J - Flemish Parliament Act on nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements

- ▶ Waste³⁷:
 - ▶ 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 VLAREM 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
 - ▶ 64M - Surface water pollution
 - ▶ 64N - Groundwater pollution

When more than one of the selected codes occurs in the same case, this case is presented in the data on the basis of the main code of those selected charges.

Cases that have not yet reached the public prosecutor's office in their entirety at the time of data extraction will not be taken into account. This specifically concerns the 'simplified official report on listing'³⁸ and the 'autonomous police investigations still in progress'. In most public prosecutor's offices, the simplified official reports drawn up by the police forces are not recorded in the system. Therefore, they were not taken into account in the figures below (as opposed to data from ANG and presented in 2.2.1). However, if the official report was requested by the

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).

³⁷ 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'.

³⁸ A simplified official report means that the most important data of certain minor breaches of the law are recorded on an electronic medium. The police only performs superficial acts of investigation or missing persons announcements. This reduces the number of unnecessary items entering the public prosecutor's office.

public prosecutor's office, this will be taken into account.

We must remember that, in general, some environmental offences transmitted to the public prosecutor's offices in a normal official report do not appear in the statistics because, for example, there is another primary offence in the case (e.g. theft), as a result of which the environmental aspect is not recorded in the system, or because new offences are often grouped into initial official reports if an investigation has been started (e.g. one initial report with the reporting of five new offences of illegal dumping), and as a result the phenomenon of environmental crime is underestimated. It should therefore be stressed that the figures only reflect the number of cases of environmental crime according to what is recorded in the public prosecutors' system, and therefore are not an indication of the extent of the criminal phenomenon. The introduction of municipal administrative sanctions for minor nuisances also has an impact on the influx of environmental cases into the public prosecutor's offices.

It was also requested that a distinction be made between priority³⁹ official reports and non-priority official reports, in the same way as for the survey of the supervisory bodies, in order to be able to make an analysis of the implementation of the 'Priority memorandum on the prosecution policy for 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

Reference can also be made in this section to the various partnerships between public prosecutor's offices. Within the jurisdiction of Ghent, a partnership has existed between the former public prosecutors (currently departments) of Ypres and Kortrijk in West Flanders since 1 January 2008. Cases relating to specialised matters are handled by one of the two departments/public prosecutor's offices. This is relevant for this analysis given that the former public prosecutor of Kortrijk is responsible for dealing with all cases received in Ypres relating to the indictment codes 63A, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M, and 64N. Since 1 November 2010, this partnership has also been extended to the entire province of West Flanders, resulting in all cases of the former districts of Ypres, Bruges and Veurne with the aforementioned indictment codes, being handled by the former public prosecutor's office (current department) of Kortrijk. The so-called quality of life offences (indictment codes 63B, 63K, 63M, 64B, 64C, and 64E) are handled exclusively by (the department of) Kortrijk since 1 June 2015. When reading the figures below, consider that some of the decisions in West Flanders were taken by magistrates attached to the former public prosecutor's office in Kortrijk (now the Kortrijk department). As from 1 December 2011, a similar partnership was started up in East Flanders, whereby the specialised magistrates attached to the (former) public prosecutor's office in Ghent are responsible for dealing with these cases. When reading the figures below, consider that some of the decisions in the East Flanders departments/public prosecutor's office were taken by magistrates attached to the current Ghent department of the public prosecutor's office in East Flanders. In the jurisdiction of Antwerp, a partnership between the former public prosecutors (currently departments) of Mechelen and Turnhout has been operational since 1 January 2011 for, among other things, the processing of environmental cases. All 'environmental hygiene' cases (indictment codes 64C, 64E, 64F, 64H, 64I, 64J, 64M, 64N and 63O) on the one

³⁹ Priority cases refer to the official reports intended for establishing offences and included in the protocol 'Priority Memorandum on the

prosecution policy for environmental law in the Flemish Region 2013'.

hand, and 'fauna and flora' (indictment codes 63A? 63B, 63C⁴⁰, 63M and 63N) on the other hand, received in Mechelen since that date are submitted for processing to the specialised magistrates attached to the former prosecutor's office (now the department) in Turnhout.

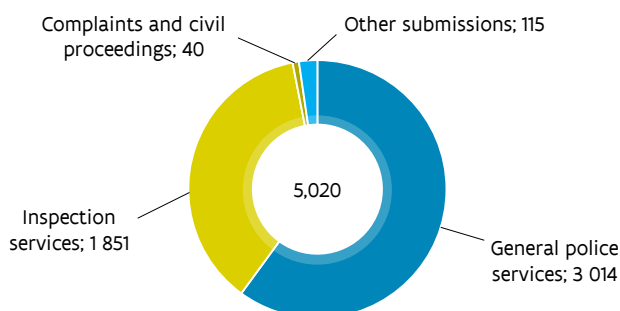
The count unit in the tables is always equal to one case. Each case corresponds to one unique reference number. A case may, of course, concern several suspects and/or several crimes. A relatively large number of cases are referred to another public prosecutor for territorial reasons. Since an indication is given of the number of cases entering the public prosecutor's offices and a referral case is often received, within the reference period, by both the original public prosecutor's office as well as the destination office, both the original reference number and the reference number of the referral case are included in the figures. The public prosecutor's statistics do not relate to crime or fact statistics and should therefore not be interpreted in this way.

In the first instance, an overview will be given of the influx of cases into the public prosecutor's offices in 2015. This will be done on the basis of the selected indictment codes and, if possible, by the reporting authority. Then we consider the latest progress (i.e. 10 January 2016) of the cases received by the public prosecutors in 2015, after which the reasons for the dismissal of environmental enforcement cases will be discussed in more detail. We mention once again that, because the reference date for the data is 10 January 2016, it is important that data regarding case progress is interpreted with care. The data and percentages in this respect only refer to the situation on 10 January 2016 and do not represent the final status of a case. Consequently, only trends can be established and certainly no definitive conclusions can be drawn yet.

⁴⁰ The cases with indictment code 63C, animal protection, are not included in the figures below.

4.1.1 Reception

Graph 10 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 2015, per reporting authority, and subdivided into four different categories, namely general police, inspection services, complaints and civil proceedings, and other submissions⁴¹



Graph 10: Number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015, per reporting authority- Source: database of the Board of Procurators General

Overall, the public prosecutor's offices received 5,020 environmental cases in 2015, of which 60% or 3,014 cases originated from the general police and 37% or 1,851 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 are cases referred from other public prosecutors and courts, also from other sections of the same public prosecutor's office, from foreign public prosecutors/courts and from the courts of 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, 40 cases or 0.79% pertained to complaints and civil 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 2015 were drawn up by the general police. In Chapter 2 it was already indicated that the general police drew up 13,373 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 2015. 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 2014 and the Environmental Enforcement Report 2013 a comparison can be made in table 34 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 2015, 2014 and 2013.

⁴¹ Cases recorded by the public prosecutors of the police courts are not included in the provided figures.

ENVIRONMENTAL ENFORCEMENT CASES

	2015		2014		2013	
	n	%	n	%	n	%
General police services	3.014	60,04	3.187	63,13	2.899	62,73
Inspection services	1.851	36,87	1.678	33,24	1.551	33,56
Complaints and civil proceedings	40	0,79	45	0,89	48	1,03
Other submissions	115	2,29	138	2,73	123	2,66
Total	5.020	100	5.048	100	4.621	100

Table 34: Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per reporting authority in 2015, 2014 and 2013 Source: database of the Board of Procurators General

The table above shows that, in 2015 and 2014, the number of cases recorded by the criminal departments of the public prosecutor's offices in the Flemish Region was more or less stable, but that this represents in any case an increase compared to the number of cases recorded in 2013. The increase for 2015 can mainly be explained by the increase in the number of cases drawn up by the inspection services, not only in absolute numbers, but also in the proportion of these cases in the total number of recorded cases. The proportion of cases referred by the general police services declined slightly in 2015 compared to 2014 and 2013.

In 2003, a technical working group was set up within the Committee on Prosecution Policy⁴², 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. The following codes were assigned:

- ▶ H2: ANB⁴³
 - ▶ H1 : Environmental Inspectorate Division - LNE-AMI
 - ▶ H4 : Water - VMM
 - ▶ H5 : Manure Bank - VLM
 - ▶ H6 : OVAM
 - ▶ H7 : Other⁴⁴

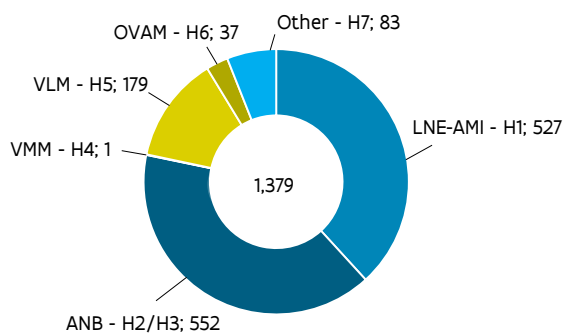
The use of these specific reference numbers made it possible to draw up the graph 11 which makes a further

⁴² 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.

⁴³ Until 2008, the codes H2/H3 were used by the legal predecessors of the ANB (department for Forest and Green, and Nature respectively). Since then, the ANB has only used the code H2.

⁴⁴ 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. (The Waterways and Maritime Affairs administration is a term used prior to Better Administrative Policy. It is now the following agencies: Waterwegen en Zeekanaal (Waterways and Sea Canal), De Scheepvaart NV, Maritime Services and Coast.)

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 2015, 2014 and 2013 per Flemish environmental enforcement service. This shows how many cases each Flemish environment service submitted as reporting authority.



Graph 11: 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 2015 - Source: database of the Board of Procurators General

In 2015, a total of 1,379 cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region which originated from the Flemish inspection services that used the above codes. The majority of these cases, that is 40%, come from the ANB. The LNE-AMI also represents a substantial share of the total number of cases from the Flemish inspection services, namely 38%. The Public Waste Agency of Flanders (OVAM) and Flemish Land Agency (VLM) account respectively for a share of almost 3% and 13%.

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 ANB, for instance, indicated that, in 2015, 692 initial

official reports were drawn up, although the public prosecutor's offices only received 552 in 2015. This can be explained by the fact that this agency also draws up official reports that are dealt with by police prosecutors. LNE-AMI, VLM, VMM and OVAM also reported a (considerably) higher number of official reports, i.e. 560, 182, 3 and 41 respectively, than received by the public prosecutors, i.e. 527, 179, 1 and 37 respectively in 2015. The other regional regulatory bodies indicated that they drew up a total of 137 official reports in 2015, whereas the public prosecutors received only 83 cases categorised as 'other'. The figures from the public prosecutor's offices may constitute an underestimate, as not all Flemish environmental administrations seem to be aware that they can use a specific code. As a result, some cases are not identified correctly in the figures above. For this reason, the VHRM once again recommends that the various environmental administrations use these codes consistently to ensure correct data collection and reporting. The difference in figures between the LNE-AMI, the VLM and the OVAM (and supervisory authorities without a specific code) and the public prosecutors may also be due to the fact that the public prosecutor does not record the initial official report as a new case. The code H7 is not or hardly used because it is unclear what is meant by this and there is no certainty that an official report register does exist. They are referred to as 'other'.

On the basis of the data from the Environmental Enforcement Report 2014 and the Environmental Enforcement Report 2013 table 35 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 2015, 2014 and in 2013.

ENVIRONMENTAL ENFORCEMENT CASES

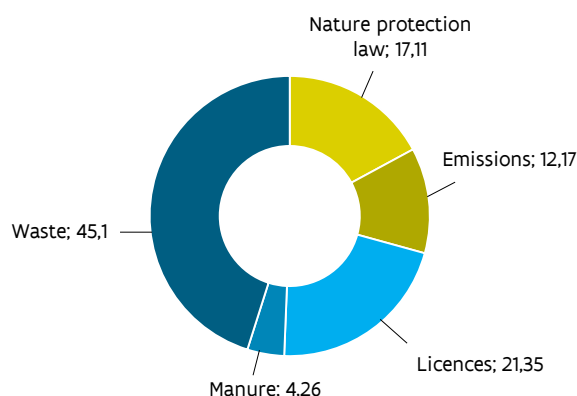
	2015		2014		2013	
	n	%	n	%	n	%
LNE-AMI - H1	527	38,22	470	37,63	427	38,23
ANB - H2	552	40,03	410	32,83	425	38,05
VMM - H4	1	0,07	/	/	/	/
VLM - H5	179	12,98	196	15,69	158	14,15
OVAM - H6	37	2,68	61	4,88	44	3,94
Overige - H7	83	6,02	112	8,97	62	5,55
TOTAL	1.379	100	1.249	100	1.117	100

Table 35: 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 2015, 2014 and 2013 - Source: database of the Board of Procurators General

The number of cases the public prosecutor's offices has received in 2015 from the different Flemish environment services has increased compared to 2013 and 2014. Compared to 2013, the number of cases increased by more than 23% in 2015. The increase compared to 2015 can be primarily attributed to the increase in the number of files from the ANB and LNE-AMI

Earlier we have already provided an overview of the different charge codes that are used to record environmental enforcement cases. This allows us for 2015 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 2015.

Graph 12 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 2015, namely 5,020 dossiers.



Graph 12: 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 2015 - Source: database of the Board of Procurators General

More than 45% 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. This concerned 2,264 cases. Cases connected to emissions and environmental law represented around 12% and 17% respectively of the total number of cases in 2015, i.e. 611 and 859 cases respectively. In addition, 1,072 cases, or more than 21%, were related to permits, and 214 cases, representing just over 4% of the total number of Environmental Enforcement cases, related to manure in 2015.

Table 36 not only makes a further subdivision of the main charge codes of 'nature protection law', 'emissions', 'licences', 'manure' and 'waste', but also

compares between 2015, 2014 and 2013 on the basis of the data from the Environmental Enforcement Report 2014 and the Environmental Enforcement Report 2013.

ENVIRONMENTAL ENFORCEMENT CASES

		2015		2014		2013	
		n	%	n	%	n	%
Nature protection law	63A – Hunting	118	2,35	141	2,79	136	2,94
	63B – Fishing	296	5,9	178	3,53	137	2,96
	63M – Flemish Parliament Act on Forests	97	1,93	112	2,22	95	2,06
	63N – Washington Convention – protected animal species, plants and ivory	98	1,95	105	2,08	126	2,73
	64J – Flemish Parliament Act on Nature conservation and the natural environment	250	4,98	203	4,02	233	5,04
	Total nature protection law	859	17,11	739	14,64	727	15,73
Air/water/soil/noise (emissions)	64A – Air and water pollution	194	3,86	160	3,17	172	3,72
	64B – Carbon monoxide	4	0,08	3	0,06	12	0,26
	64C – Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)	177	3,53	193	3,82	264	5,71
	64M – Surface water pollution	168	3,35	216	4,28	194	4,20
	64N – Groundwater pollution	68	1,35	104	2,06	106	2,29
	Total air/water/soil/noise	611	12,17	676	13,39	749	16,21
Licences	64D – Commodo – incommodo (Environmental licence)	138	2,75	96	1,9	11	0,24
	64H – Operation of an unlicensed plant	222	4,42	290	5,74	286	6,19
	64I – Non-compliance with Vlare legislation	712	14,18	613	12,14	621	13,44
	Total licences	1072	21,35	999	19,79	918	19,87
Manure	63I – Manure	49	0,98	67	1,33	66	1,43
	63O – Flemish Parliament Act on Manure	165	3,29	165	3,27	131	2,83
	Total manure	214	4,26	232	4,6	197	4,26
Waste	64E – Illegal dumping	1.740	34,66	1.779	35,24	1.468	31,77
	64F – Waste management	466	9,28	529	10,48	473	10,24
	64L – Import and transit of waste	58	1,16	94	1,86	89	1,93
	Total waste	2.264	45,1	2.402	47,58	2.030	43,93
Total		5.020	100	5.048	100	4.621	100

Table 36: 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 2015 - Source: database of the Board of Procurators General

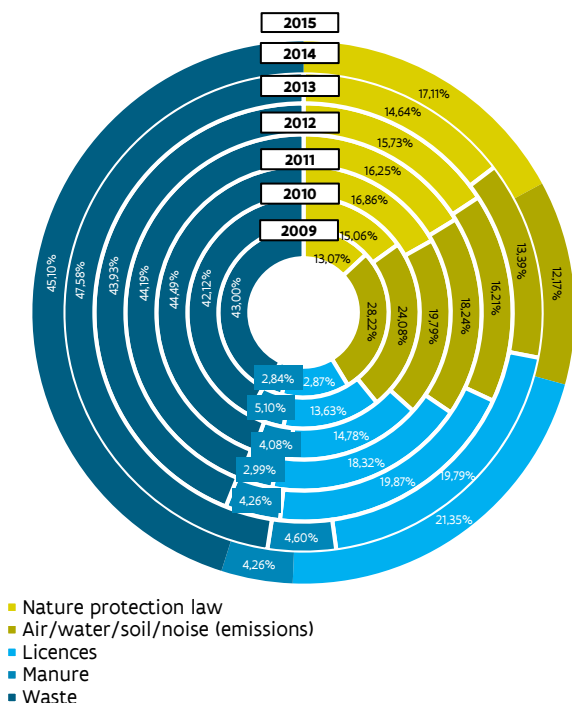
As already mentioned, the largest share (more than 45%) of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors of the Flemish Region concerned waste in 2015, as in previous years.

Table 36 shows that within the theme of waste most cases were recorded with charge code 64E. These 1,740 cases all pertained to illegal dumping. These dossiers regarding illegal dumping not only constitute the largest share within the theme 'waste' (77%), but also within the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in 2015. Almost 35% of all the cases pertained to illegal dumping in 2015. This trend could also be observed in the Environmental Enforcement Report 2014, when 35% 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.

Both in 2013, 2014 and in 2015 the cases with charge codes 63I 'manure' and 63O '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 4%, 5% and 4% 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.

Table 36 shows a decline of 33% in the absolute number of cases relating to noise standards in an urban environment (indictment code 64C) in 2015 compared to 2013. The percentage of these cases compared to the total number of recorded cases has also declined since 2013. In 2013, 6% of the total number of recorded cases related to noise standards in the urban areas. This percentage decreased to 4% in 2014 and to 3.5% in 2015. This decline could possibly be explained by the so-called GAS rules in municipalities and cities which often include noise nuisance, by the amended VLAREM noise standard, or by enforcement problems with the new noise regulations.

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, 2014 and 2015. Graph 13 gives an overview of this.



Graph 13: Percentage of the number of environmental enforcement cases recorded by charge codes- Source: database of the Board of Procurators General - statistical analysts

Graph 13 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. A trend that can be graphically presented is the decrease in the percentage share of cases regarding air/water/soil/noise (emissions) 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. In addition, it should be noted that in most cases the full 360-day period is used to seek general regularisation. As a result, very few cases are subpoenaed within the year, so the figures below give a somewhat distorted picture. 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 2016.

WANTED PERPETRATOR

This heading includes cases in which a suspect was reported as wanted on 10 January 2016. As long as the suspect is not found, this progress state will continue to apply.

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. **CASE REFERRED**

This category comprises cases which on 10 January 2016 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.

PRAETORIAN PROBATION

This heading covers cases which, on 10 January 2016, have not (yet) been the subject of criminal proceedings, provided that certain measures imposed by the public prosecutor have been complied with.

MUNICIPAL ADMINISTRATIVE SANCTION

This heading covers cases that were transferred to a public administration on 10 January 2016 for a possible municipal administrative sanction.

NON-MUNICIPAL ADMINISTRATIVE SANCTION

This heading covers cases that were transferred to a public administration⁴⁵ on 10 January 2016 for a possible non-municipal administrative sanction.

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.

CHAMBER 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.

UNKNOWN/ERROR

This heading covers cases where it has not been possible to identify the progress state. These are often merged cases for which the registrations do not allow the ascertaining of the progress state of the case to which they were merged.

As a result of the entry into force of circular COL 16/2014, decisions that were previously considered devoid of purpose are now included below as a separate final decision in the figures. This concerns the (new) progress states 'wanted perpetrator', 'praetorian probation', and '(municipal) administrative sanction'.

In addition, since 1 July 2015, regularisation cases in which the public prosecutor's office intervened successfully have been closed with a praetorian probation instead of a dismissal with the 'situation regularised' motive.

The previous environmental enforcement reports also reported on the progress state of the 'Court in chambers'. This section contains cases in the phase of legal proceedings up to the moment when findings may be brought before the criminal court. Cases which are no longer prosecuted have maintained this

⁴⁵ In the context of the Environmental Enforcement Decree, these are LNE-AMMC and VLM-Mestbank (Flemish Land Agency Manure Bank).

progress state. In 2015, this progress state was no longer reflected in the figures provided by the public prosecutors.

Table 37 provides a picture of the last state of progress on 10 January 2016 for the environmental enforcement cases recorded with the criminal divisions of the public prosecutor's offices of the Flemish Region in 2015. 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 2015, 2014 and 2013, in order to make a comparison possible.

When reading table 37, the existing public prosecutor partnerships should be taken into account (see 4.1).

ENVIRONMENTAL ENFORCEMENT CASES

	Preliminary investigation		Wanted perpetrator		Without further action		Case referral		Praetorian probation		Municipal administrative sanction		Non-municipal administrative sanction		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	%	n	%	n	%	n	%	n
PUBLIC PROSECUTOR'S OFFICE ANTWERP	254	27,67	12	1,31	223	24,29	32	3,49	18	1,96	3	0,33	315	34,31	33	3,59	1	0,11	3	0,33			24	2,61	-	-	918
ANTWERP	110	30,47	1	0,28	67	18,56	12	3,32	3	0,83	3	0,83	121	33,52	27	7,48	-	-	1	0,28			16	4,43	-	-	361
MECHELEN	51	25,63	8	4,02	56	28,14	15	7,54	4	2,01	-	-	55	27,64	3	1,51	1	0,5	-	-			6	3,02	-	-	199
TURNHOUT	93	25,98	3	0,84	100	27,93	5	1,4	11	3,07	-	-	139	38,83	3	0,84	-	-	2	0,56			2	0,56	-	-	358
PUBLIC PROSECUTOR'S OFFICE LIMBURG	121	21,01	2	0,35	214	37,15	38	6,6	3	0,52	17	2,95	102	17,71	43	7,47	2	0,35	1	0,17			32	5,56	1	0,17	576
HASSELT	40	16,06	-	-	88	35,34	16	6,43	2	0,8	7	2,81	58	23,29	19	7,63	-	-	-	-			19	7,63			249
TONGEREN	81	24,77	2	0,61	126	38,53	22	6,73	1	0,31	10	3,06	44	13,46	24	7,34	2	0,61	1	0,31			13	3,98	1	0,31	327
PUBLIC PROSECUTOR'S OFFICEHALLE-VILVOORDE	72	19,78	1	0,27	95	26,1	9	2,47	-	-	2	0,55	141	38,74	36	9,89	-	-	-	-			8	2,2	-	-	364
PUBLIC PROSECUTOR'S OFFICELEUVEN	58	19,93	4	1,37	88	30,24	55 ⁴⁶	18,9	-	-	2	0,69	41	14,09	34	11,68	1	0,34	-	-			8	2,75	-	-	291
PUBLIC PROSECUTOR'S OFFICEEAST FLANDERS	518	30,72	19	1,13	499	29,6	42	2,49	7	0,42	9	0,53	506	30,01	44	2,61	-	-	4	0,24			38	2,25	-	-	1.686
GHENT	251	33,42	8	1,07	201	26,76	25	3,33	5	0,67	-	-	236	31,42	2	0,27	-	-	1	0,13			22	2,93	-	-	751
DENDERMONDE	176	27,16	10	1,54	199	30,71	14	2,16	1	0,15	-	-	218	33,64	18	2,78	-	-	2	0,31			10	1,54	-	-	648
OUDENAARDE	91	31,71	1	0,35	99	34,49	3	1,05	1	0,35	9	3,14	52	18,12	24	8,36	-	-	1	0,35			6	2,09	-	-	287
PUBLIC PROSECUTOR'S OFFICEWEST FLANDERS	419	35,36	2	0,17	252	21,27	39	3,29	-	-	6	0,51	436	36,79	15	1,27	1	0,08	2	0,17			13	1,1	-	-	1.185
BRUGES	201	45,17	1	0,22	87	19,55	4	0,9	-	-	-	-	132	29,66	9	2,02	1	0,22	2	0,45			8	1,8	-	-	445
KORTRIJK	145	30,08	1	0,21	95	19,71	33 ⁴⁷	6,85	-	-	5	1,04	198	41,08	1	0,21	-	-	-	-			4	0,83	-	-	482
IEPER	46	27,06	-	-	53	31,18	1	0,59	-	-	1	0,59	64	37,65	4	2,35	-	-	-	-			1	0,59	-	-	170
VEURNE	27	30,68	-	-	17	19,32	1	1,14	-	-	-	-	42	47,73	1	1,14	-	-	-	-			-	-	-	-	88
Flanders 2015	1.442	28,73	40	0,8	1.371	27,31	215	4,28	28	0,56	39	0,78	1.541	30,7	205	4,08	5	0,1	10	0,20			123	2,45	1	0,02	5.020
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	

⁴⁶ In Leuven, either the code 'GAS' or the code 'AMMC' was used as the recipient of the referral in 46 cases.

⁴⁷ In Kortrijk, the code 'GAS' was used in 3 cases as the recipient of the referral.

Table 37: Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015, possibly through addition to a mother case, per judicial district- Source: database of the Board of Procurators General - statistical analysts

Table 37 shows that more than 28% 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 2016. This is a slight increase compared to 2013 and 2014.

A substantial decline can be observed with regard to the percentage share of the number of cases that had already been dismissed without further action on the extraction date (27%). In 2013, 58% of the total number of Environmental Enforcement cases had already been dismissed without further action on the extraction date, compared to 55% in 2014. However, this decline can be explained by the fact that 'wanted perpetrator', 'praetorian probation', 'municipal administrative sanction' and 'non-municipal administrative sanction' were included in the 'no further action' progress state in previous reports, while in the 2015 reporting these decision types are presented as separate progress states. If these cases were to be counted together and added to the cases that were dismissed without further action (2015 classification), a total of 3,019 cases would have been dismissed without further action in 2015 on the extraction date, which is both an increase in absolute numbers in 2014 and 2013 and a percentage increase in relation to the total number of recorded cases. More than 60% of cases in 2015 had in fact already been dismissed without further action by the extraction date. The following category 'Motives for dismissal' will deal further with the reasons for this lack of referral.

The number of referral cases on the extraction date decreased compared to 2014, but remained stable compared to 2013. These are cases that were referred to another public prosecutor's office or another (judicial) body. In certain departments, this progress state was also assigned to cases that were submitted

to municipalities or LNE-AMMC with the intention of imposing an administrative sanction.⁴⁸

There was a slight decline of amicable settlements in 2015 compared to 2013 and 2014. The number of cases in which an amicable settlement had already been proposed on the extraction date was 4% of the total number of Environmental Enforcement cases in 2015, compared to 5% in previous years.

Both in absolute figures and as a percentage share of the total number of cases, a slight increase can be observed for cases that had already been subpoenaed on the extraction date. On 10 January 2015 this was 106 cases, 2.1% of the total number of Environmental Enforcement cases. On 10 January 2016 there were 123 cases, i.e. 2.45% of the total number of Environmental Enforcement cases. In 2013, however, 3.77% of the total number of Environmental Enforcement cases had already been subpoenaed on the extraction date.

As already mentioned, 'wanted perpetrator', 'praetorian probation', 'municipal administrative sanction' and 'non-municipal administrative sanction' are, for the first time, separate progress states. Previously, these cases were included in the 'no further action' progress state; they were discussed in detail in section 4.1.3 'Reasons for dismissal'.

One of the reasons why specific reference was made in the environmental enforcement reports to these grounds for dismissal is the fact that public prosecutors have the opportunity to refer cases to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy (LNE-AMMC) with a view to imposing an administrative fine. This information is already shown in the table above with the progress state 'non-municipal administrative

⁴⁸ In Leuven, either the code 'GAS' or the code 'AMMC' was used as the recipient of the referral in 46 cases. In Kortrijk, the code 'GAS' was used in 3 cases as the recipient of the referral.

sanction'. In 2015, 1,541 cases were transferred to the competent public authority with a view to imposing an administrative sanction, which means that no less than 31% of the total number of Environmental Enforcement cases recorded on the extraction date had already been submitted for the imposition of an administrative sanction.

The table below shows these figures since the Environmental Enforcement Decree came into force in 2009. For 2015, in order to ensure the comparability of data, cases that were in the 'municipal administrative sanction' progress state as well as those in the 'non-municipal administrative sanction' progress state on the date of the extraction are added together. After all, in previous reports these cases were together under 'cases dismissed with a view to imposing an administrative fine'.

ENVIRONMENTAL ENFORCEMENT CASES

	2009	2010	2011	2012	2013	2014	2015
number of cases dismissed with a view to imposing an administrative fine (up to 2014)/with progress state 'non-municipal administrative sanction' and 'municipal administrative sanction' (2015)	299	975	1.536	1.384	1.248	1.128	1.580
% share of cases dismissed with a view to imposing an administrative fine in relation to the number of recorded cases (up to 2014)/with progress state 'non-municipal administrative sanction' and 'municipal administrative sanction' (2015)	9,89	15,31	25,6	27,56	27	22,34	31,47

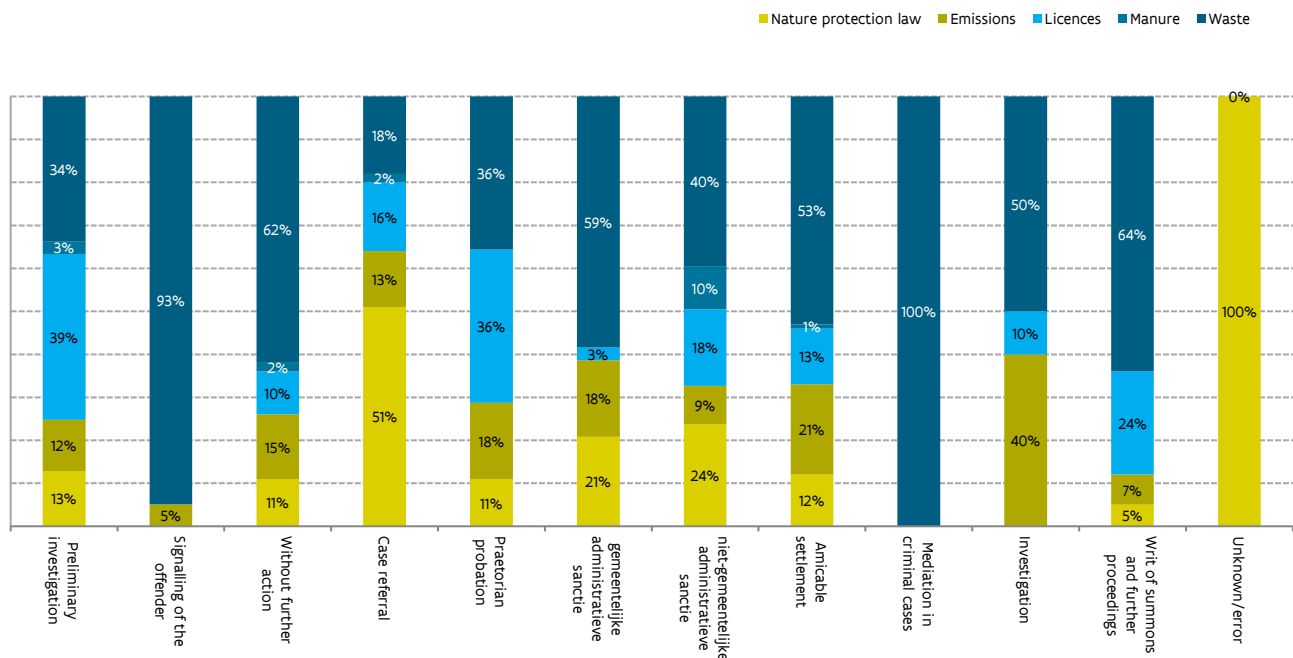
Table 38: Cases dismissed with a view to imposing an administrative fine (up to 2014)/with progress state 'non-municipal administrative sanction' and 'municipal administrative sanction' (2015)/, since Environmental Enforcement Decree came into force

The table above shows that 1,580 cases, or 31.47% of the total number of recorded Environmental Enforcement cases, had already been submitted to the competent authority on the extraction date for the imposition of an administrative sanction. This includes the municipal administrative sanctions and LNE-AMMC's alternative administrative fines. This is an increase compared to 2014. In 2014, 1,128 cases were dismissed with a view to imposing an administrative fine, i.e. 22.34% of the total number of Environmental Enforcement cases recorded by public prosecutors in 2014.

From the above table it can be deduced that the number of cases that were dismissed with a view to the imposition of an administrative fine increased steadily until 2011, but then steadily decreased, before rising again sharply in 2015. In terms of percentage, this decline was also noticeable in 2014, before increasing sharply in 2015. In fact, almost 1/3 of the total number

of Environmental Enforcement cases recorded on the extraction date in 2015 were already transferred to the competent government authority with a view to the imposition of an administrative sanction, the highest percentage since the Environmental Enforcement Decree came into force.

Graph 14 reflects, per state of progress, the share of the different categories of charge codes (waste, manure, licences, emissions and nature protection). The cases involving waste, manure, permits, emissions and environmental management were measured with a reference value set to 100 representing a certain progress state (preliminary investigation, wanted perpetrator, dismissed without further action, referral cases, praetorian probation, municipal administrative sanction, non-municipal administrative sanction, amicable settlement, mediation in criminal cases, investigation, summons, etc., unknown/error).



Graph 14: State of progress as on 10 January 2016 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015 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

It is not surprising that the majority of cases in almost all progress states – preliminary investigation, wanted perpetrator, dismissed without further action, municipal and non-municipal administrative sanctions, amicable settlement, mediation in criminal cases, and summons – in 2015 concerned waste, since the majority of recorded Environmental Enforcement cases related to waste.

The theme 'manure' has only a small percentage share in each state of progress. This is not surprising since only 214 cases regarding manure were recorded in 2015 by the criminal divisions of public prosecutor's offices in the Flemish Region. However, one in ten cases in the progress state involving non-municipal administrative sanctions did concern manure. These are cases which had already been transferred to the competent authority on extraction date with a view to the imposition of an administrative sanction.

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. Also, more than 1/3 of the cases with the progress state praetorian probation on the extraction date were related to permits. These are cases that have not (yet) been the subject of criminal proceedings, provided that certain measures imposed by the public prosecutor were met.

Table 39 gives a comparison in terms of percentage between the data from 2015, 2014 and 2013 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.

In order to make a comparison between 2015 and previous years, the new progress states 'wanted perpetrator', 'praetorian probation', 'non-municipal administrative sanction' and 'municipal administrative sanction' are included in the progress state 'dismissed without further action' as was the case in the reports of 2014 and 2013.

INDICTMENT CODE CATEGORIES

	Preliminary investigation			Without further action			Case referral			Amicable settlement			Mediation in criminal cases			investigation			Writ of summons and further proceedings			unknown/error		
	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013
Environmental management	21.42%	24.49%	27.24%	62.17%	53.45%	60.25%	12.81%	14.21%	7.84%	2.79%	2.98%	1.79%	0.00%	0.00%	0.00%	0.00%	1.62%	0.69%	0.70%	2.44%	2.20%	0.12%	0.68%	0.00%
Emissions	27.33%	25.59%	23.10%	58.76%	56.66%	57.81%	4.58%	5.62%	6.81%	7.20%	6.95%	7.48%	0.00%	0.00%	0.00%	0.65%	1.04%	0.53%	1.47%	2.66%	2.67%	0.00%	0.74%	0.27%
Licences	52.52%	48.55%	44.66%	38.99%	41.74%	48.47%	3.17%	2.70%	1.42%	2.52%	5.62%	1.85%	0.00%	0.11%	0.09%	0.40%	0.40%	0.22%	2.71%	1.10%	3.38%	0.00%	1.20%	0.00%
Manure	18.22%	19.83%	23.00%	78.97%	71.12%	71.07%	1.87%	4.31%	2.54%	0.93%	2.59%	2.54%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.43%	0.51%	0.00%	1.72%	0.00%
Waste	21.60%	20.40%	22.12%	67.98%	59.33%	60.54%	1.72%	9.53%	4.58%	4.77%	5.91%	7.24%	0.22%	1.12%	0.05%	0.22%	0.08%	0.20%	3.49%	2.41%	5.22%	0.00%	1.21%	0.00%

Table 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.

Table 39 shows that, in 2015, 3.49% of the total number of cases relating to waste on 10 January 2016 were summonsed. This is a slight increase compared to 2014, but still a decline compared to 2013. On the other hand, the percentage share of 'dismissed without further action' for waste rose in 2015 compared to 2014 and 2013. By 2015, however, the percentage of case referrals on the extraction date for waste was lower.

With regard to the cases concerning manure in 2015, it can be noted that, as in 2014 and 2013, on 10 January 2016, the majority, i.e. 79%, were dismissed without further action and almost 1/5 were still in the preliminary investigation phase. On the extraction date, not a single case had been subpoenaed and only 1% of the cases were in the amicable settlement progress state. This is a decline of 16.1% compared to 2014 and 2013.

For cases relating to permits in 2015, a further decline can be observed in the percentage of cases that were already dismissed without further action on the extraction date. On the other hand, the proportion of cases still in the preliminary investigation stage on the extraction date increased further compared to 2014 and 2013. A slight increase can be observed in 2015 in the number of cases that were already subpoenaed on the extraction date, compared to 2014, which, however, is still a decline compared to 2013.

For cases relating to emissions, an amicable settlement had already been proposed on the extraction date for more than 7% of the cases. This is in line with previous years. In comparison with cases concerning waste, permits, environmental management and manure, we observe that, in percentage terms, a large proportion of air/water/soil/noise cases were settled amicably. In terms of absolute figures, 44 cases were involved. In addition, as in 2014 and 2013, more than half of all cases relating to emissions had already been dismissed without further action on the extraction date. However, a further decline can be observed in the

percentage share of cases that had already been subpoenaed on the extraction date

We observe for environmental management cases that more than 60%, or 534 cases, were dismissed on 10 January 2016 without further action. This represents an increase compared to 2014 and 2013. The proportion of environmental management cases that were already subpoenaed on the extraction date in 2015, namely 0.70%, decreased compared to 2.44% in 2014 and 2.20% in 2013.

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 2016, 27% 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. The sections are reproduced in appendix 1 of circular COL16/2014 of the Board of Procurators General concerning the application of the Act of 12 March 1998. The entry into force of COL 16/2014 also includes some new grounds of which 'ne bis in idem' and 'priority to civil settlement' appear in the data below.

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
 - ▶ disproportion criminal proceedings - social disruption
 - ▶ victim's attitude
 - ▶ compensation to the victim
 - ▶ insufficient investigation capacity
 - ▶ other priorities
 - ▶ priority to civil settlement

- ▶ Technical dismissal:
 - ▶ no offence
 - ▶ insufficient proof
 - ▶ limitation
 - ▶ death of the offender
 - ▶ final judgement
 - ▶ ne bis in idem
 - ▶ offender(s) unknown

As already mentioned, the cases that were presented in previous reports as 'dismissed for other reasons' (*administrative fine*, *praetorian probation* and *wanted perpetrator*) are categorised for 2015, pursuant to COL 16/2014, in individual progress states, i.e. 'praetorian probation', 'wanted perpetrator', 'municipal administrative sanction' and 'non-municipal administrative sanction', as already discussed in section 4.1.2. Therefore, these cases will no longer be discussed in this section.

Table 40 illustrates the types of 'without further action' (dismissal based on the principle of opportunity and technical 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 2016.

REASONS FOR DISMISSAL

		Dismissal of a technical nature		Dismissal for reasons of expediency		Total	
		n	%	n	%	n	%
ANTWERP	ANTWERP	41	61,19	26	38,6	67	100
	MECHELEN	41	73,21	15	26,79	56	100
	TURNHOUT	75	75	25	25	100	100
	Total category	157	70,4	66	29,6	223	100
LIMBURG	HASSELT	46	52,27	42	47,73	88	100
	TONGEREN	82	65,08	44	34,92	126	100
	Total category	128	59,81	86	40,19	214	100
HALLE-VILVOORDE		70	73,68	25	26,32	95	100
LEUVEN		55	62,5	33	37,5	88	100
EAST FLANDERS	GHENT	165	82,09	36	17,91	201	100
	DENDERMONDE	108	54,27	91	45,73	199	100
	OUDENAARDE	70	70,71	29	29,29	99	100
	Total category	343	68,74	156	31,26	499	100
WEST FLANDERS	BRUGES	86	98,95	1	1,15	87	100
	KORTRIJK	91	95,79	4	4,21	95	100
	IEPER	37	69,81	16	30,19	53	100
	VEURNE	12	70,59	5	29,41	17	100
	Total category	226	89,68	26	10,32	252	100
Total		979	71,41	392	28,59	1.371	100

Table 40: Reasons for dismissing the Environmental Enforcement cases, received in 2015, in which no further action was taken on 10 January 2016, whether or not by merging with a parent case, by public prosecutor's office (and department) Source: database of the Board of Procurators General – statistical analysts

Table 40 shows that 1,371 of the total of 5,020 environmental enforcement cases which the public prosecutor's offices received were already dismissed as at 10 January 2016. This is more than 27.31% of the total number of environmental enforcement cases. Of these 1,371 cases almost 29% were dismissed for opportunity-based reasons and 71% for technical reasons. Based on the figures in the Environmental Enforcement Report 2014, it can be calculated that, on the extraction date in 2014, 33% of the 1,591 dismissed cases were dismissed without further action for reasons of expediency and 67% because of technical reasons. In 2013, this ratio was 31% and 69% for the 1,387 cases that were dismissed at the time. For the purpose of making this comparison, these dismissal figures for 2014 and 2013 do not take into account the cases that were dismissed for 'other reasons', i.e. administrative fines, praetorian probation and wanted perpetrator. As indicated above,

these breakdowns have been with individual progress states since the 2015 reports and these have been discussed in 4.1.2.

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.

REASONS FOR DISMISSAL

	Nature protection		Emissions		Licences		Manure		Waste		Total	
	n	%	n	%	n	%	N	%	n	%	n	%
Technical dismissals	104	68,42	142	67,3	96	72,73	12	57,14	625	73,1	979	71,41
No offence	20	13,16	35	16,59	33	25	4	19,05	47	5,5	139	10,14
Insufficient proof	48	31,58	52	24,64	54	40,91	7	33,33	411	48,07	572	41,72
Dropping of criminal proceedings	1	0,66	3	1,42	2	1,52	1	4,76	3	0,35	10	0,73
<i>Limitation</i>	1	0,66	3	1,42	2	1,52	-	-	2	0,23	8	0,58
<i>Death of the offender</i>	-	-	-	-	-	-	1	4,76	1	0,12	2	0,15
Inadmissibility of criminal proceedings	-	-	6	2,84	-	-	-	-	6	0,7	12	0,88
<i>Incompetence</i>	-	-	6	2,84	-	-	-	-	5	0,58	11	0,8
<i>ne bis in idem</i>	-	-	-	-	-	-	-	-	1	0,12	1	0,07
Offender(s) unknown	35	23,03	46	21,8	7	5,3	-	-	158	18,48	246	17,94
Dismissal of cases based on the principle of opportunity	48	31,58	69	32,7	36	27,27	9	42,86	230	26,9	392	28,59
Reasons that are inherent in the nature of the infractions	6	3,95	18	8,53	19	14,39	2	9,52	75	8,77	120	8,75
<i>Limited consequences for society</i>	2	1,32	1	0,47	2	1,52	-	-	5	0,58	10	0,73
<i>Situation regularised</i>	3	1,97	14	6,64	16	12,12	2	9,52	64	7,49	99	7,22
<i>Relational offence</i>	-	-	-	-	-	-	-	-	1	0,12	1	0,07
<i>Limited detriment</i>	-	-	1	0,47	-	-	-	-	1	0,12	2	0,15
<i>Reasonable term exceeded</i>	1	0,66	2	0,95	1	0,76	-	-	4	0,47	8	0,58
Reasons that are inherent in the offender's person	15	9,87	36	17,06	11	8,33	6	28,57	135	15,79	203	14,81
<i>Lack of precedent</i>	9	5,92	10	4,74	-	-	1	4,76	28	3,27	48	3,5
<i>Chance events with cause</i>	4	2,63	20	9,48	4	3,03	1	4,76	36	4,21	65	4,74
<i>Disproportion criminal proceedings – social disruption</i>	2	1,32	4	1,9	6	4,55	4	19,05	32	3,74	48	3,5
<i>houding van het slachtoffer</i>	-	-	-	-	1	0,76	-	-	-	-	1	0,07
<i>Compensation to the victim</i>	-	-	2	0,95	-	-	-	-	39	4,56	41	2,99
beleid	27	17,76	15	7,11	6	4,55	1	4,76	20	2,34	69	5,03
te weinig recherche-capaciteit	1	0,66	1	0,47	-	-	-	-	5	0,58	7	0,51
andere prioriteiten	24	15,79	13	6,16	4	3,03	1	4,76	13	1,52	55	4,01
voorrang aan de burgerlijke afhandeling	2	1,32	1	0,47	2	1,52	-	-	2	0,23	7	0,51
Total	152	100	211	100	132	100	21	100	855	100	1.371	100

Table 41: Reasons for dismissal for environmental enforcement cases without further action, as at 10 January 2016, received in 2015, possibly through addition to a mother case, per category of charge codes - Source: database of the Board of Procurators General - statistical analysts

As already mentioned, 27.31% of all dismissed Environmental Enforcement cases recorded by the criminal public prosecutors in the Flemish Region in 2015, were already dismissed on the extraction date. This represents no less than 1/5 of the total number of cases recorded in 2015. The majority, namely 979 cases, were dismissed for technical reasons. More than 40% of these 979 cases were dismissed because of insufficient evidence, almost 18% because the perpetrators were unknown, and 10% because no crime 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 2015, a total of 120 cases were dismissed for reasons that are inherent in the nature of the breaches, of which 199 cases were dismissed because the situation was regularised (within the short term). In addition, 203 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. In addition, on 10 January 2016, 69 cases were dismissed for reasons of expediency related to the policy. This may be due to a shortage of investigation capacity, or because priority was given to civil proceedings, or because other priorities were set within the public prosecutor's office. A total of 392, or almost 8% of the total number of Environmental Enforcement cases recorded by the criminal public prosecutors in the Flemish Region in 2015, were already dismissed on the extraction date, on the grounds of expediency.

If we look at the various themes, we can see that 152 cases relating to environmental management law were

already dismissed on the extraction date. This represents almost 18% of the total number of recorded cases concerning environmental management law. By analogy with the overall ratio, we observe that almost 70% were dismissed for technical reasons, mainly because there was insufficient evidence, and just over 30% for reasons of expediency, mainly for policy reasons.

As for the dossiers regarding emissions it can also be concluded that about 67% of the total of 211 dismissed cases were dismissed for technical reasons. More specifically, more than 25% were dismissed because insufficient evidence was available.

In total, 132 of the 1,072 cases regarding licences were dismissed. This represents just over 12%. With regard to dismissals in permit cases, the majority, namely 41%, were dismissed because there was insufficient evidence. In addition, 27% were dismissed for reasons of expediency.

Of the 21 manure cases already dismissed on the extraction date, a significant proportion of the cases, 43%, in comparison with the other themes, were dismissed for reasons of expediency. In addition, 1/3 of the cases were dismissed because there was insufficient evidence.

On the date of extraction, 38% of the total number of recorded cases relating to waste had already been dismissed. Nearly half, i.e. 48%, of these dismissed cases were closed without further action because there was insufficient evidence.

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 the exclusive and alternative administrative fines are imposed by the regional entity designated by the Government of Flanders, namely the Environmental Enforcement, Environmental Damage and Crisis Management Division of the LNE Department (LNE-AMMC).

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 'amicable settlement' which can be proposed by the LNE-AMMC for certain cases (with regard to both environmental offences and environmental infringements). Given the important role assigned to this division, the LNE-AMMC was also asked about its activities in the framework of environmental enforcement for the Environmental Enforcement Report 2015.

4.2.1 Processing of environmental offences

In the framework of the processing of environmental offences by the LNE-AMMC in 2015 it was asked how many official reports the LNE-AMMC received from each of the public prosecutor's offices between 1 January 2015 and 31 December 2015. This is reflected in table 42. 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. When reviewing the figures below, the effect of public prosecutor partnerships should also be taken into account. LNE-AMMC has passed on the

number of official reports as they actually received them from the public prosecutors concerned.

Official reports

	Priority official reports	Non-priority official reports	Total
Dendermonde	4	106	110
Ghent	46	454	500
Oudenaarde	2	16	18
Bruges	1	41	42
Ieper	0	3	3
Kortrijk	58	438	496
Veurne	0	12	12
Antwerp	6	120	126
Mechelen	1	24	25
Turnhout	7	191	198
Hasselt	31	49	80
Tongeren	33	54	87
Leuven	15	59	74
Halle-Vilvoorde	34	127	161
Total	238	1.694	1.932

Table 42: Official reports received by the AMMC of the Department of Environment, Nature and Energy from public prosecutor's offices in the Flemish Region in 2015

It can be deduced from table 42 that in 2015 the LNE-AMMC received a total of 932 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 fine⁴⁹. This is an increase of 14% compared to the 1,693 official reports received by LNE-AMMC in 2014. Since the coming into force of the

⁴⁹ 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.

Environmental Enforcement Decree in 2009, the number of cases received by LNE-AMMC has increased steadily. In 2009, LNE-AMMC received 304 cases (the low number can be explained by the fact that the Environmental Enforcement Decree did not enter into force until May 2009). The number of cases rose sharply in 2010 and 2011, to 1,100 and 1,597 respectively. This figure initially remained stable to a great extent, with 1,545 cases in 2012 and 1,594 cases in 2013, but has increased again since 2014.

The majority of the cases received by LNE-AMMC in 2015 were non-priority official reports⁵⁰, namely almost 88%.

Section 3.7 reveals that almost half of the official reports drawn up by supervisors were priority official reports in 2015

Table 43 not only gives the number of cases the LNE-AMMC received from the public prosecutor's offices in 2015, but also the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015. This allows us to calculate the percentage of cases which each of the public prosecutor's offices refers to the LNE-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 2015. 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 LNE-AMMC.

ZAKEN MILIEUHANDHAVING

		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 LNE-AMMC
Public prosecutor's office East Flanders	Dendermonde	110	648	16,98%
	Ghent	500	751	66,58%
	Oudenaarde	18	287	6,27%
Public prosecutor's office West Flanders	Bruges	42	445	9,44%
	Ieper	3	170	1,76%
	Kortrijk	496	482	102,90% ¹
	Veurne	12	88	13,64%
Public prosecutor's office Antwerp	Antwerp	126	361	34,90%
	Mechelen	25	199	12,56%
	Turnhout	198	358	55,31%
Public prosecutor's office Limburg	Hasselt	80	249	32,13%
	Tongeren	87	327	26,61%
Public prosecutor's office Leuven		74	291	25,43%
Public prosecutor's office Halle-Vilvoorde		161	364	44,23%
Total		1.932	5.020	38,49%

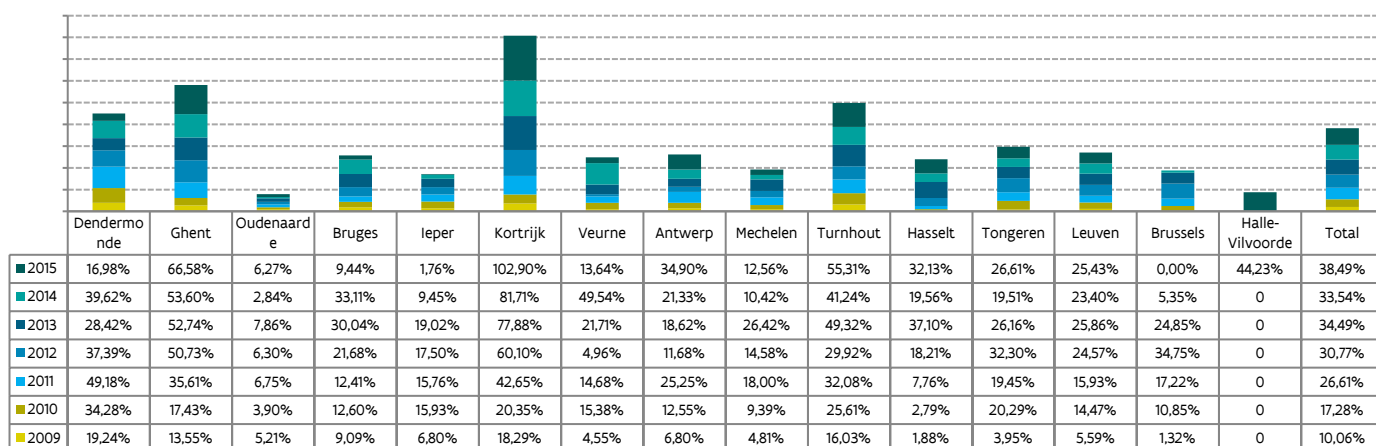
Table 43: Percentage share of official reports received by LNE-AMMC out of the total number of 'environmental enforcement' cases recorded by the public prosecutor's office

⁵⁰ Non-priority official reports are those official reports used to establish the findings of crimes that are not included in the protocol 'Priority Memorandum on the prosecution policy for environmental law in the Flemish Region 2013'.

Based on the data above, it can be concluded that the LNE-AMMC in 2015 registered on average 38,49% of the total number of Environmental enforcement cases registered by the public prosecutor's offices in 2015. For the public prosecutor's office of East Flanders, we observe that approximately 37% of the cases recorded in the departments of the public prosecutor's office of East Flanders were transferred to LNE-AMMC. The public prosecutor's office in West Flanders recorded a total of 1,185 Environmental Enforcement cases in 2015. LNE-AMMC received a total of 553 cases from the various departments of the public prosecutor's office in West Flanders. This means that approximately 47% of the cases recorded by the public prosecutor's office of West Flanders on the extraction date had already been submitted to LNE-AMMC with a view to imposing

an alternative administrative fine. This ratio is 38% for the public prosecutor's office in Antwerp and 29% for the public prosecutor's office in Limburg. Table 43 shows a ratio of 25% for the public prosecutor's offices in Leuven and 44% for Halle-Vilvoorde. Generally speaking for 2015, LNE-AMMC received at least ¼ of the total number of Environmental Enforcement cases recorded by public prosecutors with a view to imposing an alternative administrative fine.

Based on the previous environment enforcement reports, these figures are displayed in graph 15 per public prosecutor's office since the coming into force of the Environmental Enforcement Act.



Graph 15: Percentage share of cases referred to the LNE-AMMC since the coming into force of the Environmental Enforcement Act in 2009

Generally speaking, the percentage share of the number of cases submitted to LNE-AMMC has steadily increased since the coming into force of the Environmental Enforcement Decree in 2009, with the exception of a slight decline in 2014.

The above graph also shows ongoing regional differences in the percentage share of official reports

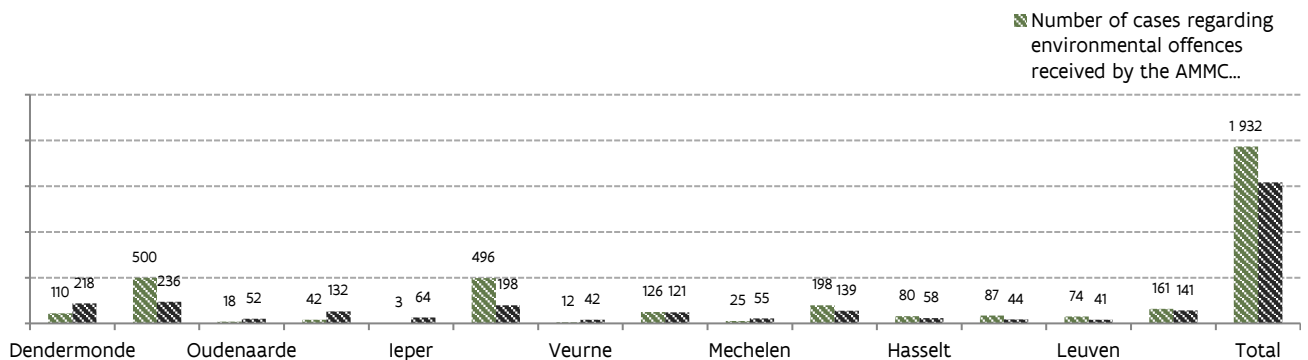
sent to LNE-AMMC since the coming into force of the Environmental Enforcement Decree. For example, there are departments that transfer more than half of the official reports they register to LNE-AMMC with a view to imposing an administrative fine, while other public prosecutors make only limited use of this option. In addition, a sharp decline or a sharp increase will be noticeable in certain departments in 2015. However,

these shifts and regional differences can partly be explained, as explained above, by the existing public prosecutor partnerships and by the fact that LNE-AMMC reports about the department that sent the case to LNE-AMMC and not about the department that has jurisdiction in the area where the report was drawn up.

NOTE

The figures above referring to the number of cases submitted by the public prosecutor's offices and

received by LNE-AMMC are based on the figures which the Flemish High Enforcement Council for Spatial Planning and Environment received from the LNE-AMMC. On the basis of the figures that the VHRM received from the public prosecutors, a discrepancy can be established if this is compared with cases in the 'non-municipal administrative sanction' progress state on the extraction date. This is illustrated in the following graph.



Graphic 16: Number of cases concerning environmental offences received by LNE-AMMC and the number of Environmental Enforcement cases recorded in 2015 by the criminal divisions of the public prosecutors of the Flemish Region, in the 'non-municipal administrative sanction' progress state.

The above graph shows that LNE-AMMC received 391 cases more than the number already in the 'non-municipal administrative sanction' progress state with the public prosecutors on the extraction date; this is already an overestimation of the number of cases submitted to LNE-AMMC with a view to imposing an administrative fine, considering the proportion of cases transferred to the Manure Bank with a view to imposing an administrative fine. One possible explanation for this is that the extraction date was not exactly the same day for the public prosecutor's offices and LNE-AMMC.

This imbalance can be observed at the various public prosecutor's offices. For example, 506 cases were in the 'non-municipal administrative sanction' progress state at the East Flanders public prosecutor's office on the extraction date, while LNE-AMMC stated that it had received 628 cases from this public prosecutor's office

in 2015. For the public prosecutor's office in West Flanders, this ratio is 436 cases in the 'non-municipal administrative sanction' progress state and 553 cases received by LNE-AMMC. For the public prosecutor's office in Antwerp, this ratio is 315 cases in the 'non-municipal administrative sanction' progress state and 349 cases received by LNE-AMMC from this public prosecutor's office; the ratio is 102 cases for the public prosecutor's office compared to 167 cases received by LNE-AMMC in Limburg in 2015. Graph 15 shows that LNE-AMMC received 33 and 20 more cases in 2015 from the public prosecutor's offices of Leuven and Halle-Vilvoorde respectively than the number of cases in the 'non-municipal administrative sanction' progress state on the extraction date.

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 LNE-AMMC.

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 LNE-AMMC. Table 44 shows the number of cases received by LNE-AMMC from the public prosecutor's offices, drawn up by the various enforcement bodies, namely the Agency for Roads and Traffic, the federal police, the local police, the municipal and inter-municipal supervisors, LNE-AMI, the provincial supervisors, the special constables, LNE-AMI, ANB, OVAM, VMM and VLM.

OFFICIAL REPORTS

PV door LNE-AMMC in 2015 ontvangen				
ENFORCEMENT BODY	Priority	%	Non- priority	%
Agency for Roads and Traffic	0	0,00	39	2,30
Federal police	0	0,00	14	0,83
Local police	14	5,88	786	46,40
Municipal supervisors	17	7,14	96	5,67
Inter-municipal supervisors	0	0,00	0	0,00
Provincial supervisors	0	0,00	0	0,00
LNE – AMI	62	26,05	219	12,93
LNE – AMV	8	3,36	10	0,59
ANB	76	31,93	372	21,96
Special rural constabulary	0	0,00	33	1,95
OVAM	2	0,84	21	1,24
VLM	59	24,79	102	6,02
VMM	0	0,00	2	0,12
Total	238	100,00	1.694	100,00

Table 44: Percentage share of the official reports received by the LNE-AMMC in 2015, per enforcement actor

41% of the official reports which the LNE-AMMC received in 2015 were drawn up by the local police. In absolute figures it concerned 800 official reports. In addition, it is clear from table 44 that almost 20% of the received official reports were drawn up by the Agency for Nature and Forests and almost 15% by AMI supervisors.

Table 45 gives an overview of the topics of the cases which the LNE-AMMC received in 2015. Here, the same themes are used as those in the evaluation of the sanctions policy pursued by the public prosecutor's offices.

OFFICIAL REPORTS

ENVIRONMENTAL THEMES	OR received by LNE-AMMC in 2015			
	Priority	%	Non-priority	%
Nature protection	75	31,51	422	24,91
Air, Water, Soil and Noise	33	13,87	255	15,05
Licences	54	22,69	254	14,99
Manure	56	23,53	107	6,32
Waste	20	8,40	656	38,72
Total	238	100,00	1694	100,00

Table 45: Percentage share of official reports received by the LNE-AMMC in 2015, per environmental theme

Almost 35% of the cases referred to waste. This is not surprising. As indicated in the previous section, no less than 45% of the total number of cases recorded by public prosecutor's offices in 2015 had a waste-related charge code. In addition, more than 1/4 of the cases received by LNE-AMMC in 2015 were related to environmental management, 16% to permits, 15% to emissions and 8% to manure.

Table 46 gives an overview of the number and type of decisions taken by the LNE-AMMC in 2015 within the framework of the alternative administrative fine. As mentioned earlier, since September 2012, the LNE-AMMC has the option to propose an administrative transaction for certain environmental offences. This administrative transaction can be considered as a kind of amicable settlement since the fine procedure no longer applies after payment of the proposed amount. However, when the offender refuses the proposal of an administrative transaction, the LNE-AMMC will resume the procedure for the imposition of an alternative administrative fine. The VHRM has thus also asked the LNE-AMMC, as it did in 2014, to indicate how many such administrative transactions were proposed in 2015.

Table 46 presents the data for 2015 as well as the decisions taken by the LNE-AMMC in the framework of the alternative administrative fine since the entry into effect of the Environmental Enforcement Act.

ALTERNATIVE ADMINISTRATIVE FINES

	2009	2010	2011	2012	2013	2014	2015	
Official reports received by LNE-AMMC from the public prosecutor's offices	304	1.100	1.597	1.545	1.594	1.693	1.932	
Handling/settling files in the context of alternative administrative fine	5	219	378	1.442	1.543	1.737	2.234	
Ruling did not imply a fine	0	6	40	402	258	231	348 ¹	
Ruling implied a fine	0	151	279	1.040	966	848	1.356	
(Voorgestelde en) bestuurlijke transactie werd betaald	/	/	/	7	311	658	(912)	530
The official report did not fall under the scope of Chapter XVI of the DABM.	5	62	59	0	8	0	/ ¹	

Table 46: Decisions taken by the LNE-AMMC in the context of alternative administrative fines

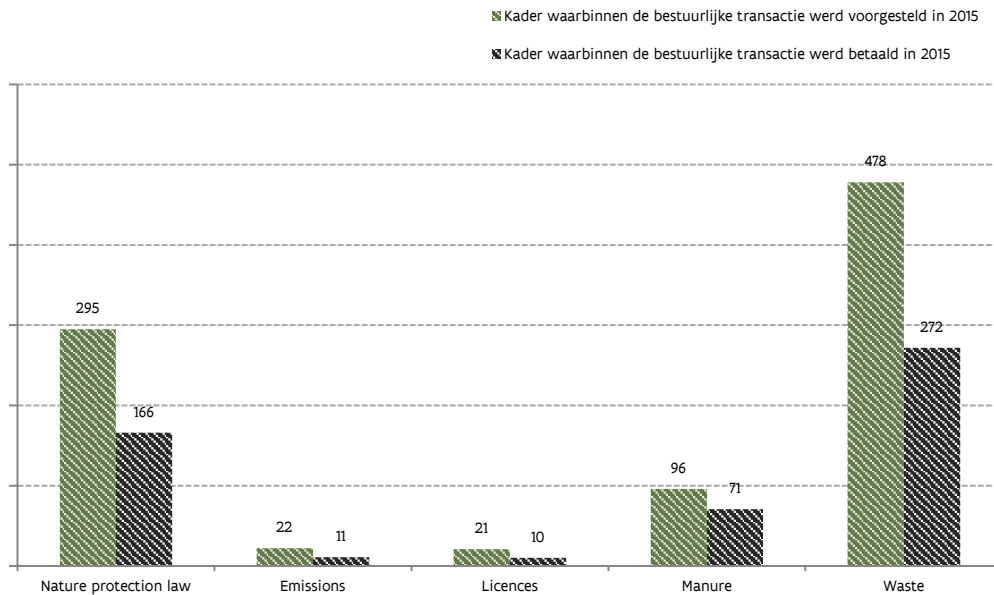
For 2015, we see that LNE-AMMC received 1,932 cases and processed 2,234 cases. This means that, in 2015, decisions (and even a majority of them) were made concerning cases from previous years. A total of 1,356 alternative administrative fines were imposed. In 348 cases it was decided not to impose a fine or the official report was not within the scope of section XVI of DABM. In addition, 912 administrative transactions were proposed and 530 were paid. The 1,356 decisions relating to fines also include the fines that were imposed after the administrative transaction proposal was not accepted.

In general, since the introduction of the Environmental Enforcement Act in May 2009, the LNE-AMMC has received no less than 9,765 official reports from the public prosecutor's. Between 1 May 2009 and 31 December 2015, the LNE-AMMC reached a decision in 77% of these 9,765 cases. During this period 4,640 alternative administrative fines were imposed. In 1,419 cases it was also decided not to impose a fine or the official report did not fall within the scope of the Environmental Enforcement Decree. Since 7,558 cases were processed in that period, it's possible to calculate that 1,499⁵¹ cases were processed using the abridged procedure, namely the administrative transaction.

An expropriation of unlawful material benefits was imposed in 65 out of a total of 1,356 alternative administrative fines given in 2015. This amounts to almost 5%. Of the 216 fine rulings concerning environmental management, 9 alternative fines were coupled with a deprivation of benefits. For fines in the area of emissions, 13 of the 293 fines were coupled to a deprivation of benefits. In percentage terms, the permit fines were the most frequently subject to an expropriation of unlawful material benefits, i.e. almost 14% of the total number of permit fines were subject to an expropriation of unlawful material benefits. On the other hand, we see that not a single alternative administrative manure fine imposed in 2015 was subject to an expropriation of unlawful material benefits.

For 30% of the decisions imposing fines taken in 2015, the official report related to waste. Approximately 16% were related to environmental management. 22% of the alternative fines imposed in 2015 related to emissions and 8% to manure. In addition, almost 1/5 of the decisions imposing fines related to permit cases.

⁵¹ This figure is not obvious from the data in the table, given that LNE-AMMC reported differently on the proposed and paid administrative transactions for the various environmental enforcement reports.



Graphic 17: Framework for proposing and paying administrative transactions, by environmental theme

In graph 17, the framework within which the administration transactions are proposed in 2015 and the framework in which the administrative transactions were paid⁵² in 2015 is shown.

Graph 17 shows that LNE-AMMC proposed a total of 912 administrative transactions in 2015 and that more than half of these proposals, i.e. 52%, concerned waste. In addition, for 32% of the proposals, the case concerned environmental management and more than 1/10 of the cases concerned manure.

In addition, based on the table, it can be concluded that in 2015 a total of 530 proposals to payment in the context of the procedure for administrative transactions was accepted. Given that the payment term for an administrative transaction is 3 months, administrative transactions proposed in 2014 were only paid in 2015. However, given these payment terms, it is not possible to establish a one-to-one relationship

between the proposals and the administrative transactions actually paid, on the basis of the above table. LNE-AMMC state that the overall payment response for the proposed administrative transactions was 74% in 2015. The payment rate, however, depends on the theme. For example, the payment rate for unauthorised dumping cases is only 63%, while the administrative transaction is accepted in 85% of the manure cases.

⁵² Een deel van de in 2015 voorgestelde bestuurlijke transacties zullen worden betaald in 2016. Daarnaast werd er in 2015 ingegaan op bestuurlijke transacties die waren voorgesteld in 2014. De koppeling is dus niet 100% gelet op betalingstermijn van 3 maanden.

4.2.2 Processing of environmental infringements

In the context of dealing with environmental infringements, LNE-AMMC was asked to indicate how many incident reports it had received in 2015, whether these were drawn up by municipal, provincial, regional or police district supervisors or supervisors of a police district or inter-municipal association, and for what reason these incident reports were drawn up and fined.

It was communicated by the LNE-AMMC that in 2015 it received a total of 137 identification reports within the framework of identified environmental infringements. More than 90% of these incident reports were drawn up by regional supervisors. In fact, 64 were transferred to LNE-AMMC by ANB, 45 by OVAM, 11 by LNE-AMI, 2 by LNE-ALBON and 2 by LNE-AMV. In addition, 7 identification reports were drawn up by municipal supervisors and 6 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 2015. These numbers differ from the numbers received by LNE-AMMC in 2015. In total, regulatory bodies reported having drawn up 199 incident reports, while LNE-AMMC received 137 in 2015. The responding municipal supervisors indicated having drawn up a total of 40 identification reports, whereas the LNE-AMMC received but 7 identification reports from this actor in 2015. It can also be concluded that the responding regional supervisors drew up 147 identification reports in 2015, while the LNE-AMMC received only 124 such reports. Local police supervisors reported having drawn up 12 incident reports, while LNE-AMMC received only half.

The LNE-AMMC was asked to indicate in what framework identification reports were drawn up in 2015. This is reflected in table 47

IDENTIFICATION REPORTS

Nature protection	64
Emissions	17
Licences	12
Manure	0
Waste	44

Table 47: Identification reports received by the AMMC per subject, in 2015

The table above shows that 47% of the total number of incident reports dealt with environmental management and 32% with waste. In addition, 12% of the 137 received incident reports concerned emissions and 8% concerned permits.

The LNE-AMMC was asked to indicate which decisions were taken in 2015 with respect to the received identification reports. Table 48 gives an overview of the decisions regarding fines taken in 2015 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 LNE-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 LNE-AMMC. This comparison is presented in table 48.

EXCLUSIVE ADMINISTRATIVE FINES

	2009	2010	2011	2012	2013	2014	2015
Identification reports received by AMMC	18	38	18	47	89	50	137
Ruling made in the context of Exclusive administrative fine	4	13	36	52	65	31	127
Ruling did not imply a fine	1	0	2	3	0	4	10 ¹
Ruling implied a fine	3	5	32	49	54	20	68
Proposed administrative transaction was paid	/	/	/	0	11	7	(65) 49
The identification report did not fall under the scope of Chapter XVI of the DABM.	0	8	2	0	0	0	/ ¹

Table 48: Decisions taken by the LNE-AMMC in the context of exclusive administrative fines

The table above shows that, in 2015, LNE-AMMC received a total of 137 incident reports and took 127 decisions in relation to identified environmental infringements. In almost 54% of these decisions, an exclusive administrative fine was imposed, while in 10 cases it was decided not to impose a fine or it was found that the incident report did not fall within the scope of section XVI of SGI. In addition, 65 administrative transactions were proposed and 49 were paid. The 68 decisions relating to fines also include the fines that were imposed after the administrative transaction proposal was not accepted.

Since the Environmental Enforcement Decree came into force in May 2009 and until 31 December 2015, LNE-AMMC has received a total of 397 incident reports. A decision was already taken during that period in 83% of the cases. For example, an exclusive administrative fine was imposed in 231 cases, representing 70% of the total number of decisions, and in 30 cases it was decided not to impose an administrative fine or the incident report did not fall within the scope of the Environmental Enforcement Decree. We also see that 67 cases were processed with the abridged procedure, namely the administrative transaction.

Table 49 shows the framework within used by LNE-AMMC to impose the fines in 2015.

FRAMEWORK FOR EXCLUSIVE ADMINISTRATIVE FINES

	Number <u>without</u> expropriation of unlawful material benefits:	Number <u>with</u> expropriation of unlawful material benefits:
Nature protection	6	0
Emissions	17	0
Licences	30	4
Manure	0	0
Waste	7	4

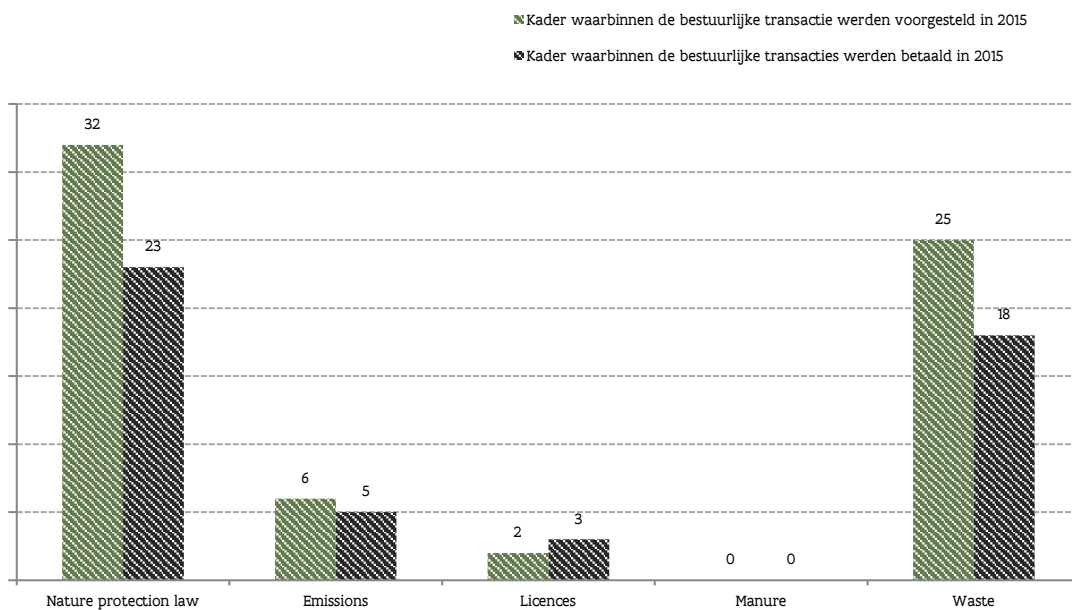
Table 49: Framework for imposing an exclusive administrative fine

The table above shows that almost 12% of the exclusive administrative fines imposed in 2015 involved an expropriation of unlawful material benefits, and that this was the case for waste and permit cases. In addition, half of the cases where an exclusive administrative fine was imposed related to permits, 25% to emissions cases. In addition, 16% of the cases related to waste and 9% to environmental management.

Graph 18 shows the framework for presenting administrative transactions in 2015 and the framework for the payment of administrative transactions in 2015.⁵³

⁵³ Some of the administrative transactions proposed in 2015 will be paid in 2016. Moreover, 2015 handled administrative transactions that were proposed

in 2014. The matching is therefore not 100% given that the payment term is 3 months.



Graph 18: Framework within which an administrative transaction was proposed and paid, per environmental theme

Graph 18 shows that LNE-AMMC proposed a total of 65 administrative transactions in 2015 and that almost half of these proposals, i.e. 49%, related to environmental management. In addition, for 38% of the proposals, the case related to waste and 9% of the cases related to emissions.

The graph also shows that, in 2015, a total of 49 payment proposals were accepted as part of the administrative transaction procedure. Given that the payment term for an administrative transaction is 3 months, administrative transactions proposed in 2014 were only paid in 2015. However, given these payment terms, it is not possible to establish a one-to-one relationship between the proposals and the administrative transactions actually paid, on the basis of the graph.

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

The Environmental Enforcement Court (MHC) is an independent administrative court that was established in context of article 16.4.19 of DABM. It rules on appeals against decisions of the Environmental Enforcement, Environmental Damage and Crisis Management department (LNE-AMMC) imposing an alternative or exclusive administrative fine, whether or not accompanied by an expropriation of unlawful material benefits, that were taken following the establishment of an environmental infringement or an environmental offence.

The decisions that the Environmental Enforcement Court can take are stipulated in article 16.4.19 para 3 of the Environmental Enforcement Decree:

- ▶ the Environmental Enforcement Court is not authorised to hear the appeal, in which case it decides to reject the appeal;
- ▶ the appeal is inadmissible. The Environmental Enforcement Court also decides in this case to reject the appeal without examining the substance of the case;
- ▶ the appeal is unfounded. In this case, the Environmental Enforcement Council also decides

to reject the appeal, but after examining the merits of the case. This decision confirms the contested decision to impose a fine with regard to the appeal aspect;

- ▶ the appeal is justified. In this case, the Environmental Enforcement Court annuls the contested decision in whole or in part, in which case (as a rule) LNE-AMMC can take a new decision, except in those cases for which it is not or no longer authorised. However, the Environmental Enforcement Court can also take a decision on the amount of the fine and, where applicable, the expropriation of unlawful material benefits, and determine that its decision on this matter replaces the annulled decision.

The Environmental Enforcement Court was also surveyed by the VHRM about its activities in 2015. It was asked about the number of appeals against decisions of the LNE-AMMC it had received in the framework of both environmental offences and environmental infringements in 2015. Another question was how these appeals were processed. Table 50 shows the activities of the Environmental Enforcement Court in 2015 with regard to the appeals lodged against decisions of the LNE-AMMC.

APPEALS

	Environmental offences	Environmental breaches	Total
Received in 2015	147	1	148
ARRESTS	Environmental offences	Environmental breaches	Total
Appeal inadmissible (after simplified procedure)	7	-	7
Appeal unfounded, fine confirmed	15	-	15
Appeal completely or partially well-founded, with reduction/cancellation of fine	10	1	11
Appeal completely or partially well-founded, judgement AMMC vacated out of hand	5	-	5
Granting waiving appeal	-	-	-
Appeal devoid of purpose	1	-	1
Interlocutory ruling	28	2	30
Total	66	3	69

Table 50: Appeals received against decisions of the LNE-AMMC in the context of environmental offences and environmental infringements by the Environmental Enforcement Court in 2015 and the results of the processing thereof

In the previous section it was indicated that the LNE-AMMC imposed 1,356 alternative administrative fines in 2015. It can be deduced from table 50 that the Environmental Enforcement Court received 147 appeals against decisions of the LNE-AMMC regarding the imposed alternative administrative fines in 2015. This means that an appeal was lodged against almost 11% of the decisions of the LNE-AMMC. However, there is no conclusive one-to-one relationship. 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 LNE-AMMC. This means that an appeal may still have been lodged against decisions taken by the LNE-AMMC during the last thirty days of 2015. This may in turn be cancelled out by the fact that the appeals received in 2015 can also refer to decisions taken in the last thirty days of 2014.

Compared with 2014 and 2013, the 'appeal rate' for LNE-AMMC's decisions relating to alternative administrative fines remained more or less stable. This ratio was 12% in the Environmental Enforcement Report 2014 and 10% in 2013. If we look at the period since the

introduction of the Environmental Enforcement Court up to and including 2015, an appeal percentage of nearly 10% can be identified since a total of 462 appeals were lodged with the Environmental Enforcement Court and the LNE-AMMC in that period imposed a total of 4,642 alternative administrative fines.

Table 50 indicates, among other things, that the Environmental Enforcement Court registered 147 appeals in 2015 and in 2015 a total of 66 judgments were delivered. Of the total number of appeals that were lodged against imposed alternative administrative fines, 11% were declared inadmissible, 23% were declared unfounded, which means that the fine imposed by the LNE-AMMC was confirmed, and 23% were declared partially or entirely well-founded with a reduced fine as a result. For 42% of the judgements in 2015, an interim judgement was handed down in 2015.

In total, the Environmental Enforcement Court received, since its commencement of operations and up to and including 2015, 462 appeals pertaining to

alternative administrative fines imposed by the LNE-AMMC and in this same period, 323 (interim) decisions were taken, which represents nearly 70%.

Within the framework of the exclusive administrative fines imposed by the LNE-AMMC in 2015, table 50 shows an appeal rate of at least 1%. It was indeed indicated in the previous section that in 2015 the LNE-AMMC imposed 68 exclusive administrative fines, whereas the Environmental Enforcement Court received 1 appeal in 2015 in the context of exclusive administrative fines. However, there is no conclusive one-to-one relationship. 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 LNE-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 LNE-AMMC during the last thirty days of 2015.

The Environmental Enforcement Report 2014 indicates that the Environmental Enforcement Court received 8 appeals in 2014 against LNE-AMMC decisions about environmental infringements. In 2014, the LNE-AMMC imposed 20 exclusive administrative fines. As a result, the appeal rate was 40% in 2014. In 2013, 54 exclusive administrative fines were imposed by the LNE-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 2015, an appeal percentage of more than 11% can be identified since a total of 25 appeals were lodged with the Environmental Enforcement Court and the LNE-AMMC in that period imposed a total of 163 alternative administrative fines.

Table 50 shows, among other things, that the Environmental Enforcement Court received 1 appeal against imposed exclusive administrative fines in 2015 and actually reached 3 decisions in 2015. One appeal was upheld in whole or in part, with reduction/remission of the fine, and two interim judgements were handed down.

In total, the Environmental Enforcement Court received, since its commencement of operations and up to and including 2015, 26 appeals pertaining to exclusive administrative fines imposed by the LNE-AMMC and in this same period, 22 (interim) decisions were taken, which represents nearly 85% 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 (LNE-AMMC) 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 draw up a manure delivery contract 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 2015 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 51 shows the number of field identifications and the number of administrative fines imposed by the VLM in 2015.

ADMINISTRATIVE FINES AND FIELD IDENTIFICATIONS IMPOSED BY THE VLM

	Number of field identifications	Number of administrative fines
ADMINISTRATIVE FINES IMPOSED BY THE VLM IN KEEPING WITH THE PROVISIONS INCLUDED IN THE FLEMISH PARLIAMENT ACT ON MANURE	143	2.669
the balance nitrogen and phosphate	3	45
overfertilisation of a plot	0	0
more animals than nutrient emission rights (NER-D)	5	1.367
unproven manure sales	0	0
an administrative fine concerning the notification and cancellation of shipments	12	11
late notification of shipments	6	3
shipments without proof of dispatch or presentation of an agreement with the neighbours	6	0
failure to establish or notify an agreement with the neighbours	12	6
shipments without a correct and complete manure sales document	30	15
failure to comply with the notification obligation	2	871
erroneous notification	13	9
failure to keep a register	2	1
nutrient balances not available for inspection	0	0
shipment without mandatory documents	4	0
refusal to use Sanitel	0	0
failure to use or incorrect use of AGR-GPS	35	23
manure processing obligation and processing of 25% NER	2	144
manure excretion balances	0	0
shipment by recognised shippers (notification or cancellation)	1	1
shipment by recognised shippers (no shipping document)	1	1
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
the timely reporting of the transport by an authorised consignor	1	1
drawing up a manure delivery contract	4	0
not carrying out the nitrate residue analysis or doing so incorrectly	0	169
performing transport for a neighbourly agreement without the tractor belonging to the supplier or buyer	1	1
notice of performing a neighbourly agreement	3	1

Table 51: Number and nature of the administrative fines imposed by the Flemish Land Agency

Table 51 shows that in 2015 the Flemish Land Agency (VLM) imposed 2,669 fines following 143 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 2015 for all the identifications that were made in 2015. The fines imposed in 2015 may still relate to

breaches that were identified during previous years. On the other hand, it is possible that breaches that were identified in 2015 were not fined until 2016. Moreover, the fines imposed in 2015 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.

A limited number of fines for findings established in 2015 have not yet been effectively imposed and are therefore not yet included in the report.

Table 51 indicates, among other things, that 51% of the total number of imposed fines were imposed due to the fact that more animals were kept than nutrient emission rights were available and 33% due to failure to comply with the notification obligation

5 CONCLUSIONS AND RECOMMENDATIONS

This last section will provide an overview of the conclusions regarding the evaluation of the implemented environmental enforcement policy, the use of the instruments, and the sanctions policy in 2015.

Based on the formulated conclusions and insights, this section subsequently formulates recommendations for the further development of environmental enforcement policy.

5.1 EFFORTS

Regional supervisors

Based on the data in the second chapter, it can be concluded that a total of 741 regional supervisors were appointed in 2015. This number is higher than the 711 and 722 regional supervisors appointed in 2014 and 2013 respectively. In 2015, a total of 181.72 FTEs were deployed for environmental enforcement duties by the regional supervisory bodies, of which 166.19 by the supervisors and 15.8 by non-supervisory bodies for administrative support. In 2014, the total amount of FTEs deployed for environmental enforcement tasks by the supervisory bodies was 174.72 FTEs and 165.77 FTEs in 2013. So not only did the number of supervisors increase in 2015 but also the amount of time spent on environmental enforcement tasks. The number of environmental enforcement inspections carried out by these regional supervisors also increased considerably in 2015 compared to 2013 and 2014. In 2015, a total of 37,625 inspections were carried out by regional supervisors, compared to 29,068 in 2013 and 27,558 in 2014. This increase in the number of inspections carried out was greater than the increase in the number of supervisors appointed and the number of FTEs devoted to enforcement duties. Indeed, an increase in the average number of inspections per supervisor and the average number of inspections per FTE can also be observed for 2015. The average number of inspections per supervisor was 40 in 2013, 39 in 2014 and increased to an average of 51 environmental enforcement inspections per supervisor in 2015. The average number

of inspections per FTE was 175 in 2013, 158 in 2014 and 207 in 2015.

In other words, a positive evolution can thus be observed in 2015 with regard to the efforts made by the regional supervisory bodies, given the increase in the number of appointed regional supervisors, the number of FTEs devoted to enforcement tasks and the increase in the number of environmental enforcement inspections.

Local and Federal police

The data concerning the local and federal police show that, in 2015, a total of 13,373 official environmental reports were drawn in the Flemish Region. Approximately 97% of these official reports were drawn up by the local police and less than 3% by the federal police. Nearly a quarter of these official reports related to 'waste by private individuals'. In 2014, a total of 15,303 official reports were drawn up by the police services.

In 2015, the Federal Police carried out 595 proactive inspections of waste shipments on the territory of the Flemish Region, as part of the National Safety Plan 2012-2015. This is a slight increase, despite a decline in inspection capacity, compared to the 531 inspections carried out in 2014.

With regard to the local police, the data in chapter 2 show that by 2015 almost half of the responding police districts could use the services of a supervisor from their own police district. This is an increase compared

to previous years when 1/3 of the responding police districts had at least one supervisor at their disposal. The total number of supervisors within the police districts increased in recent years, and also the average number of supervisors per police district with at least one supervisor increased in 2015 compared to 2013 and 2014. The ratio was 1.64 in 2013, 1.84 in 2014 and 1.88 in 2015. However, the number of FTEs deployed for environmental enforcement duties by these supervisors declined slightly in 2015 to 26 FTEs, compared to 2014 when 28 FTEs were deployed for enforcement tasks; however, this still represents an increase compared to the 25 FTEs deployed in 2013. This also means that the average amount of time spent by each supervisor has also fluctuated slightly in recent years, but in general we can conclude that the average local police supervisor is engaged in environmental enforcement duties for just under half of their time. For 2015 it was also possible to calculate the average time, i.e. 0.83 FTEs, spent on environmental enforcement tasks in the police districts that have appointed supervisors within their own police district. In 2013, the average amount time for these duties was 0.72 FTE and in 2014 it was 0.86 FTE.

In 2015, a total of 5,661 environmental enforcement inspections were carried out – 88.5% of which were carried out in response to complaints and reports – by the 60 supervisors appointed within the local police districts. This is an increase compared to the 4,900 inspections carried out by 59 supervisors in 2014 and the 4,762 environmental enforcement inspections carried out by 56 supervisors in 2013. The average number of environmental enforcement inspections per supervisor rose to 94 in 2015, compared to 85 in 2013 and 83 in 2014. The average number of inspections per FTE also increased: from 195 in 2013 to 177 in 2014, and to 215 environmental enforcement inspections per FTE in 2015. In comparison with regional and municipal supervisors (see below), the local police supervisors have the highest number of inspections per supervisor and the highest number of inspections per FTE.

Provinces

With regard to the activities of the provincial governors related to imposing administrative measures and safety measures, it can be concluded that the provincial governors did not receive any questions/requests for the imposition of administrative measures in 2015, nor did they impose any administrative measures on their own initiative. Only one provincial governor received questions or requests to impose safety measures. However, no safety measures were taken or imposed by the provincial governors in 2015.

Only two of the five provinces together had 9 appointed provincial supervisors in 2015. Within these two provinces, a total of 1.05 FTEs were deployed for environmental enforcement tasks pursuant to the Environmental Enforcement Decree. A total of 36 environmental enforcement inspections – 86% of which were carried out on their own initiative – were carried out by the provincial supervisors.

Municipalities

Like the provincial governors, the mayors of Flemish cities and municipalities have powers with regard to administrative measures and safety measures pursuant to the Environmental Enforcement Decree. In 2015, only 17% of the 244 responding mayors received a request or a question to impose an administrative measure. A similar percentage applies for the number of mayors who actually imposed an administrative measure in 2015. In total, the mayors received 123 questions/requests for the imposition of administrative measures. This is a decline compared to previous years. In addition, the second chapter shows that a total of 144 administrative measures were imposed by the mayors. This is also a decline compared to 2014. The majority, i.e. 78%, of the administrative measures imposed in 2015, were regularisation orders. With regard to the safety measures, it was found that only 4% of the responding mayors together had received 12 questions about the imposition of a safety measure in 2015. In addition, 6% of the responding

mayors also effectively imposed a safety measure in 2015. A total of 25 safety measures were imposed by the mayors.

With regard to nuisance-causing plants in Flemish cities and municipalities, the data in chapter 2 show that, in 2015, 235 of the 244 responding municipalities together had 16,114 class 1 plants and 47,082 class 2 plants on their territory. The remaining 9 municipalities reported that they have no information about the number of class 1 and class 2 establishments on their territory. The number of municipalities that have no insight into the number of class 3 establishments is slightly higher, namely 5% of the total of 244 responding municipalities. In 2015, the other 231 municipalities together had 133,002 class 3 establishments on their territory. In addition, no less than 160 of the responding municipalities indicated that they were aware of a total of 9,176 establishments that had not been granted a permit while being subject to a permit or reporting requirement. In 2014, this figure was 2,847 and in 2013 it was 3,829. The remaining 84 municipalities indicated that they did not know the number of unlicensed establishments or that they did not have unlicensed establishments on their territory.

The data on the number of nuisance-causing class 2 establishments revealed whether or not the municipalities complied with the provisions of the Environmental Enforcement Decree concerning the appointment of a minimum number of supervisors within their own municipality, police district and/or the inter-municipal associations. It can be concluded that at least 7% and a maximum of 8% of the responding municipalities did not have sufficient supervisors at their disposal in 2015. Fourteen of the 244 responding municipalities even had no supervisor at all at their disposal in 2015. If the number of nuisance-causing establishments is not precisely or insufficiently known, the number of supervisors that a municipality must have at its disposal can also be determined on the basis of the number of inhabitants. If this criterion is applied, almost 7% of municipalities with more than 30,000 inhabitants did not yet comply

with the relevant provisions of the Environmental Enforcement Decree in 2015.

With regard to municipal supervisors, it was found that a total of 263 municipal supervisors were appointed in 2015 in 189 municipalities, which together deployed a total of 58.43 FTEs for environmental enforcement duties. There was an increase in the number of supervisors compared to 2014, but a decline in the total number of FTEs deployed for environmental enforcement duties. The average amount of time spent per municipal supervisor on environmental enforcement duties in 2015 was 0.22 FTE, which means that the average supervisor spends less than $\frac{1}{4}$ of his time performing environmental enforcement duties. In 2014, the average amount of time spent per supervisor was still 0.25 FTE. By way of comparison, the average time spent by the regional supervisor in 2015 was 0.25 FTE and 0.43 FTE by the local police supervisor.

In 2015, a total of 5,097 environmental enforcement inspections – 74% of which were carried out in response to complaints and reports – were carried out by the 263 municipal supervisors. This is an increase compared to the 4,462 inspections carried out by 253 supervisors in 2014. The average number of environmental enforcement inspections per supervisor rose from 18 in 2014 to 19 in 2015. In 2013, this number was also 19 inspections per supervisor. The average number of inspections per FTE also increased from 71 in 2014 to 87 inspections per FTE in 2015. In 2013, this amounted to 81 inspections per FTE.

To organise environmental enforcement within inter-municipal associations, it was found that 53 municipalities made use, either in part or in whole, of four inter-municipal associations for the organisation of their environmental enforcement activities in 2015. This means that 17% of all Flemish cities and municipalities rely in one way or another on an inter-municipal association for the enforcement of environmental regulations on their territory. A total of 15 supervisory directors were appointed within these 4 inter-municipal associations and a total of 3.14 FTEs

carried out environmental enforcement duties. These supervisors carried out 272 environmental enforcement inspections, 85% of which were in response to complaints and reports.

5.2 INSTRUMENTS

The third chapter of the present Environmental Enforcement Report discussed the use of the separate environmental enforcement instruments in 2015.

Inspections and violations

In 2015, a total of 48,419 environmental enforcement inspections were carried out by regional supervisors, provincial supervisors, municipal supervisors and local police supervisors. This is an increase compared to the 36,921 environmental enforcement inspections carried out in 2014.

In 77% of all environmental enforcement inspections carried out, no violations were found. An infringement was detected in only 11,196 cases. Violations were mainly established when the municipal supervisors carried out inspections. Almost half of all inspections carried out by municipal supervisors were found to be in breach of the regulations. In the case of local police supervisors, this ratio is 1 to 3. Only 18% of the inspections carried out by regional supervisors were found to have committed an infringement. In 2014, 73% of all inspections carried out were found not to be in breach. However, in 2013 and 2012 this was only 63%, in 2011 it was 68% and in 2010 it was 67% of the total number of inspections carried out. This means that fewer and fewer inspections were carried out in the last two years that resulted in a violation being detected. This change could indicate an increased level of compliance or the lack of a risk-based approach.

No further action was taken with regard to the violation found in only 2% of a total of 11,196 inspections where a violation was found. This is an improvement compared to the data in the Environmental Enforcement Report 2014 and 2013, when no further action was taken with regard to the violation found in 9% and 15% of the inspections where a violation was found.

For only 1% of the 48,419 environmental enforcement inspections performed in 2015, the result was unknown. This is a decline in comparison with 2013 and 2014, when this percentage was 11.5% and 5% respectively.

This decline indicates an improvement in the monitoring by the supervisory authorities.

Recommendations and warnings

In 2015, a total of 5,152 recommendations were formulated by the different supervisors for a total of 37,223 inspections during which no breach was identified. This is an application rate of 14%. In 2013, this percentage was 11.5% (in total 2,789 exhortations) and in 2014 7% (in total 1,895 exhortations). As in previous years, the regional supervisory bodies used the recommendation instrument significantly less than the municipal supervisors and the local police supervisors.

The warning instrument was also widely used in 2015. A warning was issued in more than 4/5 of all inspections. In total, as many as 9,103 warnings were formulated in 2015 during 11,196 inspections where an infringement was found. This is on average a percentage share of 81%. In 2014 and 2013, this percentage was 47% 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.

Incident reports and official reports

Compared to the other instruments, we observe that in general, as in previous years, the incident report instrument was not used often in 2015. A total of 199 incident reports were drawn up. However, this is an increase compared to the 59 and 110 incident reports produced by the regulatory bodies in 2014 and 2013 respectively. The percentage ratio for the use of this instrument in relation to all inspections for which an

infringement was detected doubled in 2015 compared to 2014 and 2013, although it was only 2%.

In 2,890 of the total of 11,196 inspections where a breach was identified, an official report was drawn up in 2015. This is a percentage of 26%. This ratio is similar to the percentage for 2014 when an official report was drawn up in 28% of the total number of inspections in which an infringement was detected, i.e. 2,796. In 2013, 14,319 inspections revealed a violation and 2,418 official reports were drawn up, representing 17%. With regard to the use of the official report instrument, it can also be established for 2015 that 49%⁵⁴ of the official reports drawn up were priority official reports pursuant to the 'Priority Memorandum on the prosecution policy for environmental law in the Flemish Region'.

Administrative measures and safety measures

In 2015, a total of 585 administrative measures were imposed by the supervisory authorities. This is a decline compared to the 626 administrative measures imposed in 2013 but an increase compared to the 447 administrative measures imposed in 2014. However, in percentage terms, compared to the number of inspections where an infringement was detected, the number of administrative measures imposed remains more or less the same. This ratio was 5% in 2015, 4% in 2013 and 5% in 2014. In addition, it was found that almost $\frac{1}{4}$ of the administrative measures imposed in 2015 were not implemented within the required time limits. In 2014, this percentage was 15% and in 2013 it was 13%. This shows that it is becoming increasingly difficult to ensure the timely implementation of administrative measures. This problem is particularly noticeable for administrative measures imposed by local police supervisors and municipal supervisors. Regional supervisors can combine their imposed

administrative measures with an administrative penalty payment. In 2015, this instrument was used four times by one body, namely CAC. In one case, the administrative penalty payment was also effectively collected.

In 2015, 43 appeals were lodged with the minister against decisions containing administrative measures. Despite the increase in the number of imposed administrative measures, this represents a decline compared to the 60 appeals filed in 2014, but an increase compared to the 38 appeals filed in 2013. The appeal ratio was 7% in 2015. 39 of the 43 appeals lodged in 2015 were declared admissible. For 36 of these appeals, a judgement was given within the time limit. For the other three cases, the period within which the minister must take a decision had not yet expired at the time of the report. 42% of the decisions were unfounded appeals, $\frac{1}{4}$ of the decisions were partially justified and 14% were fully justified. 19% of the appeals were declared devoid of purpose.

In 2015, 5 appeals were lodged against dismissed requests for the imposition of administrative measures. In 2014 and 2013, these figures were 10 and 7 respectively. 3 of the appeals lodged in 2015 were declared admissible, of which 2 were upheld as justified and 1 was declared unfounded.

In 2015, a total of 130 safety measures were imposed by the supervisors. This is an increase compared to the 97 and 126 safety measures imposed in 2014 and 2013. Most of the safety measures are imposed by the municipal supervisors.

⁵⁴ This figure is somewhat distorted by the fact that some services effectively draw up priority official reports but do not identify them as such. It can be assumed that the share of priority official reports

compared to the share of non-priority official reports is higher in reality.

5.3 IMPOSITIONS OF SANCTIONS

In the section on criminal sanctions in 2015, chapter 4 reveals that 5,020 Environmental Enforcement cases were recorded by the criminal department of the public prosecutor's offices in the Flemish Region. 60% of these cases came from the general police and 37% from the inspection services. In 2014, a total of 5,048 Environmental Enforcement cases were recorded, and in 2013 a total of 4,261 cases were recorded.

In more than 45%, or 2,264 cases, of the total number of Environmental Enforcement cases recorded by the criminal departments of the public prosecutors of the Flemish Region in 2015, the main indictment code related to the waste theme. Emissions and environmental law cases represented 13% and 17% respectively of the total number of cases in 2015. In addition, 21% were related to permits and 4% to manure. These ratios are more or less the same as those in the Environmental Enforcement Report 2014 and the Environmental Enforcement Report 2013.

In 2015, 1,740 cases related to illegal dumping. This means that a significant proportion of the total number of cases recorded by the criminal divisions of the public prosecutors in the Flemish Region related to illegal dumping, namely almost 35%. This trend can also be seen in the previous environmental enforcement reports.

Chapter 4 also shows that more than 28% of the total number of Environmental Enforcement cases recorded by the criminal prosecution offices of the Flemish Region were still under preliminary investigation on the extraction date. In addition, 27% of cases had already been dismissed without further action (dismissal for reasons of expediency or technical reasons), 4% had proposed an amicable settlement and 2.45% of the total number of cases had already been subpoenaed on the extraction date. Furthermore, 31% of the total number of Environmental Enforcement cases had already been transferred to the competent

service on the extraction date, with a view to imposing an administrative sanction.

The percentage of the total number of Environmental Enforcement cases referred to the authorised service with a view to imposing an administrative sanction has risen sharply since the coming into force of the Environmental Enforcement Decree. In 2009, this percentage was almost 10%, in 2010 15%, in 2011 26%, in 2012 28%, in 2013 27%, in 2014 22% and in 2015 31%.

With regard to the grounds for dismissal, 29% of the 1,371 Environmental Enforcement cases that had already been dismissed on the extraction date were dismissed for reasons of expediency. In addition, 71% were dismissed for technical reasons. In 2014, 33% had been dismissed on the extraction date for reasons of expediency and 67% for technical reasons. In 2013, this ratio was 31% and 69%.

With regard to the administrative sanctions, chapter 4 reveals that LNE-AMMC received 1,932 official reports in 2015 from the criminal divisions of the public prosecutors in the Flemish Region with a view to imposing an alternative administrative fine. This number has continued to increase since the coming into force of the Environmental Enforcement Decree, although differences can still be observed between the various public prosecutors' departments for the percentage of official reports in relation to the total number of recorded cases referred to LNE-AMMC. More than 40% of the cases submitted to LNE-AMMC in 2015 were official reports drawn up by the local police. In addition, 35% related to waste.

In 2015, LNE-AMMC processed 2,234 cases referred by the public prosecutors. In 1,356 of these cases an alternative administrative fine was imposed. In 348 cases it was decided not to impose a fine and in 912 cases an administrative transaction was proposed. 530 transaction proposals were paid in 2015. An

expropriation of unlawful material benefits was imposed in 65 out of a total of 1,356 imposed alternative administrative fines.

In addition, in 2015 LNE-AMMC received 137 incident reports with a view to imposing an exclusive administrative fine for the identified environmental infringement in question. Most of these incident reports, i.e. more than 90%, were drawn up by regional supervisors. Moreover, almost half of these identification reports dealt with environmental management and almost 1/3 with waste.

In 2015, LNE-AMMC took 127 decisions regarding identified environmental infringements. An exclusive administrative fine was imposed for almost 54% of these decisions, while it was decided not to impose a fine in 10 cases. In addition, 65 administrative transactions were proposed. In 2015, 49 transaction proposals were paid. An expropriation of unlawful material benefits was imposed for 8 out of a total of 68 imposed exclusive administrative fines.

In 2015, appeals were lodged with the Environmental Enforcement Court against 147 of the 1,356 alternative fines imposed by the LNE-AMMC, which means an appeals percentage of 11%. In 2015, the Environmental Enforcement Court delivered a total of 66 judgements concerning appeals against alternative administrative fines imposed by LNE-AMMC. 11% of the appeals were declared inadmissible, 23% of the appeals were declared unfounded and 23% of the appeals were also declared fully or partially justified with a reduction or annulment of the fine as a result. In 42% of the judgements in 2015, an interim judgement was handed down in 2015.

With regard to the exclusive administrative fines imposed by LNE-AMMC, the Environmental Enforcement Court received 1 appeal in 2015 and 3 decisions were taken by the Environmental Enforcement Court in 2015. One appeal was upheld in whole or in part with a reduction or remission of the fine, and two interim judgements were handed down.

As regards VLM's power to impose administrative fines in 2015, the last part of chapter 4 shows that 143 field incidents reports were made and 2,669 fines were imposed.

5.4 RECOMMENDATIONS

The recommendations below are formulated on the basis of the findings made in this environmental enforcement report and to optimise the environmental enforcement policy. A number of these recommendations were already formulated in the previous environmental enforcement reports, but they are still relevant given the figures for 2015 and are therefore repeated here.

I. Local supervisors

The Environmental Enforcement Decree contains provisions for the organisation of local enforcement and the appointment of local supervisors and provincial supervisors. As in previous reports, the figures in this environmental enforcement report give rise to the formulation of recommendations to optimise local environmental enforcement.

1. Appointment of a local supervisor

The municipalities have the possibility to appoint supervisors within their own municipalities, but they can also choose to have a supervisor appointed within an inter-municipal association or within their local police district. The annual survey showed that there are still responding municipalities that cannot use the services of an appointed supervisor or supervisors at all or insufficiently. It is recommended that these municipalities also comply with the provisions of the Environmental Enforcement Decree.

2. Appointment of provincial supervisors

Only two of the five Flemish provinces have already appointed provincial supervisors. It is therefore recommended that the provinces that have not yet appointed provincial supervisors in accordance with the Environmental Enforcement Decree still do so.

3. Expressing supervisors in FTEs

As in previous years, the figures in this environmental enforcement report also show that appointed supervisors can only spend a limited part of their time on environmental enforcement duties. The regional supervisor can deploy an average of 0.24 FTEs for environmental enforcement duties, the municipal supervisor 0.25 FTEs and the local police supervisor 0.44 FTEs. The fact that the appointed supervisor cannot be involved full-time in environmental enforcement duties naturally also affects the number of inspections that can be carried out. 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 local supervisors have been appointed on paper but in fact are able to spend little time on enforcement duties. Such an approach would require an amendment of the legislation and could be linked to a subsidy scheme that still needs to be developed but for which a statutory basis is already provided in the Environmental Enforcement Decree (art. 16.3.4)

4. Promoting inter-municipal collaboration

Based on the data provided by the responding inter-municipal associations, it was calculated that 17% of all Flemish cities and municipalities rely in one way or another on an inter-municipal association for the enforcement of environmental regulations on their territory. Collaboration via an inter-municipal association can generate economies of scale and guarantee a higher level of expertise through specialisation for example. It is therefore recommended that the possibilities for inter-municipal collaboration are further explored.

II. Risk-oriented supervision and programme-based enforcement

The objective of risk-oriented supervision and programme-based enforcement is to use financial resources as effectively and efficiently as possible in order to achieve the highest environmental return. This means, among other things, that enforcement should be used primarily where either violations can be expected or where the environmental damage in the event of a violation could be relatively extensive. So this not only calls for enforcement activities that enforce reactively (in response to complaints) but also requires supervisory authorities to develop a programme on their own initiative, for example using a risk analysis, and organise enforcement activities on the basis of the expected risks and the associated potential benefits of enforcement.

5. Focus on risk-oriented supervision

Chapter 3 revealed that, out of a total of 48,419 environmental enforcement inspections carried out by supervisors in 2015, no violations were established in 77% of these cases. Notwithstanding the fact that this figure may indicate a high level of compliance and that the presence of supervisors in the field also has an impact on compliance behaviour, this raised number of inspections without violations being established may also indicate the lack of a risk-oriented approach and the lack of targeted supervision. In order to use the limited resources more efficiently, it is therefore recommended that regulatory bodies focus (more) on a risk-oriented approach.

6. Importance of programme-based enforcement

It is important to find a balance between programme-based and reactive enforcement (in response to complaints and reports). In the absence of sufficient resources, there is a danger that only reactive enforcement can be maintained. In addition, it is necessary to support the trend towards risk-oriented enforcement, which has already been used by many supervisory bodies.

7. Focus on tackling unlicensed establishments

The data provided showed that, in 2015, a total of no less than 9,176 nuisance-causing but (wholly or partially) unlicensed/reported establishments were active in 160 responding municipalities. This concerns establishments that, on the basis of the VLAREM regulation, can be classified as being a class 1, class 2 or class 3 establishment, but have not yet been granted a permit and were therefore not operated legitimately. These municipalities are aware of environmental legislation violations. It is therefore recommended, once again, that efforts are focused primarily on these violations. After all, mandatory permit and reporting requirements are the cornerstone of administrative environmental law, because conditions can also be imposed by means of a permit or the reporting requirement with a view to improving the environmental quality and limiting nuisance.

III. Monitoring

Effective monitoring is necessary to organise enforcement. Not only in the context of risk-oriented and programme-based enforcement, but also to encourage proper reporting and monitoring. The following recommendations are therefore formulated based on the data in this environmental enforcement report, .

8. Knowledge of nuisance-causing establishments

An essential condition for effective environmental enforcement is that information is available regarding the establishments located on one's own territory. The figures provided show that a number of municipalities do not yet have a clear picture of the number of class 1, class 2 and class 3 establishments on their territory. This has proved to be a sore spot for several years. The recommendation needs to be repeated again this year that the number of establishments that require mandatory permits and reporting must be registered at the local level.

9. Use specific E codes

Based on a comparison of the figures provided by the various regional supervisory bodies and the figures provided by the public prosecutors, it was found that the specific E-codes within the reference numbers are not always used by the regional supervisory bodies. As a result, some cases end up in the figures of the public prosecutors and cannot be identified. For this reason, it is recommended that the various environmental administrations make consistent use of these codes to ensure correct data collection and reporting.

10. Monitoring Priority Memorandum.

The protocol "Priority Memorandum on the prosecution policy for environmental law in the Flemish Region" was drawn up by the VHRM, with the aim of indicating which violations were considered to have 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 assumes, on the one hand, that all supervisors indicate in the event of a violation whether the official report drawn up is a priority or not, and on the other hand, that the sanctioning bodies also indicate how these official reports considered to be a priority were dealt with, and provide feedback about this to the supervisors. The figures provided show that not all the bodies involved classify the official report as a priority or not, or do not enter the classification data in their own monitoring system. This means it is not possible to assess the Priority Memorandum adequately. It is therefore recommended that all the enforcement bodies involved guarantee the correct implementation and follow-up of the Priority Memorandum.

11. Full monitoring and reporting

It is recommended that the extent to which each enforcement body can ensure full monitoring (internal) and reporting (internal and of third parties, e.g. the VHRM) is investigated, and in particular with regard to

the usage of each instrument, but also check and monitor whether the problem has been remedied each time and when the enforcement process is finished. Such monitoring provides a picture of the deployment and effectiveness of the instruments.

IV. Failure to implement administrative measures on time

Imposing administrative measures is intended to end an illegal situation within the imposed time limit. In 2015, almost $\frac{1}{4}$ of the imposed administrative measures were not implemented within the time limit set by the supervisor. This is undesirable. On the one hand, this may undermine the authority of the administrative authorities that imposed the measures but, on the other hand, prolongs an illegal situation. It is therefore recommended that the authorised body uses the available instruments to enforce an imposed administrative measure within the required time limit. For this purpose, the supervisor can make use of administrative coercive measures, whereby the supervisor himself remedies the situation and recovers the costs from the offender. The regional supervisor can also make use of the administrative penalty payment instrument, which is linked to the administrative measure. Finally, the supervisor can also draw up an official report if an administrative measure is not implemented. In such cases, it is recommended that the Public Prosecutor brings criminal proceedings before the criminal court in order to send a clear signal to hard-line offenders.

As mentioned above, the regional supervisor also has the administrative penalty payment instrument as a back-up measure. Local supervisors are not able to use this instrument for the time being. However, approximately $\frac{1}{4}$ of the administrative measures imposed by the municipal and local police supervisors in 2015 were not implemented on time. It is therefore recommended that the administrative penalty payment instrument is also made available to all supervisors.

GAS regulations, can also be established and reported by regional supervisors.

V. Environmental enforcement as a task for the police force

On the basis of this environmental enforcement report, we can also conclude that environmental enforcement and supervision is a responsibility that is not only embraced by regional authorities and municipalities for example; the various police forces also play an important role with regard to environmental enforcement. In addition to the activities of the federal police concerning proactive inspections in the context of waste shipments, many environmental inspections are carried out and official reports drawn up by the general police services, as explained in chapter 2. We also see considerable efforts made by the appointed local supervisors within the police force. It is therefore recommended that the police force are able/will continue to carry out these duties.

VI. Establishing illegal dumping

As in previous years, the figures from the public prosecutor's offices show that illegal dumping is the most frequently established offence in the Flemish Region. In fact, more than 1/3 of the Environmental Enforcement cases recorded by the public prosecutors in the Flemish Region concern illegal dumping. These are often cases that can also be categorised as local nuisances and should preferably be processed at a local level by means of a so-called GAS fine. The reason why these cases are still referred to the public prosecutor's office and, where appropriate, to LNE-AMMC for an administrative fine, is that not all municipalities have provided for (such) nuisance cases in their police regulations, or that the infringement is not reported pursuant to the GAS regulations. It is therefore recommended that municipalities include provisions to establish and report illegal dumping in their GAS regulations. In this respect, it should also be investigated how these violations, if included in the

6 ANNEXES

- ▶ Glossary of terms - abbreviations
- ▶ List of graphs
- ▶ 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)

6.2 LIST OF GRAPHS

- Graph 1: Proactive inspections (reported by the completion of an ECO form) of waste shipments on the territory of the Flemish Region in 2015
- Graph 2: Number and type of environmental enforcement inspections carried out by local police supervisors within the framework of the Environmental Enforcement Act in 2015
- Graph 3: Number and type of environmental enforcement inspections carried out by local police supervisors within the framework of the Environmental Enforcement Act in 2015, 2014 and 2013
- Graph 4: Response rate in percentages of the mayors of the Flemish cities and municipalities per category of municipalities
- Graph 5: Number of responding mayors who received a request/petition to impose administrative measures and the number of responding mayors who imposed administrative measures in 2015
- Graph 6: Average number of supervisors per city/municipality 2009-2015
- Graph 7: Average number of inspections per municipal supervisor
- Graph 8: Average number of environmental enforcement inspections per FTE
- Graph 9: Ratio between priority and non-priority official reports in 2015
- Graph 10: Number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015, per reporting authority- Source: database of the Board of Procurators General
- Graph 11: 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 2015 - Source: database of the Board of Procurators General
- Graph 12: 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 2015 - Source: database of the Board of Procurators General
- Graph 13: Percentage of the number of environmental enforcement cases recorded by charge codes- Source: database of the Board of Procurators General - statistical analysts
- Graph 14: State of progress as on 10 January 2016 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015 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
- Graph 15: Percentage share of cases referred to the LNE-AMMC since the coming into force of the Environmental Enforcement Act in 2009
- Graphic 16: Number of cases concerning environmental offences received by LNE-AMMC and the number of Environmental Enforcement cases recorded in 2015 by the criminal divisions of the public prosecutors of the Flemish Region, in the 'non-municipal administrative sanction' progress state.
- Graph 17: Framework within which an administrative transaction was imposed and paid, per environmental theme
- Graph 18: Framework within which an administrative transaction was imposed and paid, per environmental theme

6.3 LIST OF TABLES

Table 1:	Number of supervisors per regional supervisory body in 2013, 2014 and 2015
Table 2:	Efforts of the regional supervisory body related to environmental enforcement duties in 2013, 2014 and 2015
Table 3:	Total number of environmental enforcement inspections that are carried out by supervisors
Table 4:	Efforts related to environmental enforcement duties 2015
Table 5:	Official reports drawn up by police forces for environmental offences in the Flemish Region in 2015
Table 6:	Categories of Flemish police districts, including number of police districts per category and number of respondents per category
Table 7:	Overview of the appointment of local police supervisors and efforts related to environmental enforcement duties in 2014 (per population)
Table 8:	Overview of efforts related to environmental enforcement duties by local police supervisors (according to population) in 2015
Table 9:	Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2015
Table 10:	Number and type of administrative measures imposed by the mayors of the Flemish cities and municipalities in 2015
Table 11:	Number of responding mayors who received a request to impose safety measures and the number of responding mayors who imposed safety measures in 2015
Table 12:	Number of requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2015
Table 13:	Number and type of safety measures imposed by the mayors of the Flemish cities and municipalities in 2015
Table 14:	Number of responding municipalities per category compared to the total number of municipalities per category in 2015
Table 15:	Number of nuisance-causing plants per category of municipalities in 2015
Table 16:	Appointment of local supervisors on the basis of the number of nuisance-causing plants in 2015
Table 17:	Appointment of local supervisors on the basis of the population in 2015
Table 18:	Appointment and amount of time dedicated by municipal supervisors per category of municipalities in 2015
Table 19:	Efforts related to environmental enforcement duties by municipal supervisors per category of municipalities (according to population) in 2015
Table 20:	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 2015
Table 21:	Comparison between the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified' for 2015
Table 22:	Number of 'inspections without further action' compared to the total number of 'inspections during which a breach was identified' in 2013, 2014 and 2015
Table 23:	Number of inspections with unknown results in 2015 and their percentage of the total number of environmental enforcement inspections carried out in 2015, 2014 en 2013

Table 24:	Number of 'recommendations' made by supervisors compared to the total number of 'inspections during which no breach was identified'
Table 25:	Number of 'exhortations' formulated by supervisors compared to the total number of 'inspections during which a breach was identified'
Table 26:	Number of 'identification reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'
Table 27:	Number of 'official reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'
Table 28:	Number of imposed administrative measures compared to the number of inspections during which a breach was identified in 2013, 2014 and 2015
Table 29:	Types of administrative measures imposed in 2015
Table 30:	Comparison of the decision of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2015, 2014 and 2013
Table 31:	Percentage share of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, in 2015, 2014 and 2013
Table 32:	Number of appeals lodged against refused petitions for the imposition of administrative measures in 2015, 2014 and 2013
Table 33:	Nature of the imposed safety measures
Table 34:	Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per reporting authority in 2015, 2014 and 2013 Source: database of the Board of Procurators General
Table 35:	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 2015, 2014 and 2013 - Source: database of the Board of Procurators General
Table 36:	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 2015 - Source: database of the Board of Procurators General
Table 37:	Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2015, possibly through addition to a mother case, per judicial district- Source: database of the Board of Procurators General - statistical analysts
Table 38:	Cases dismissed with a view to imposing an administrative fine (up to 2014)/with progress state 'non-municipal administrative sanction' and 'municipal administrative sanction' (2015)/, since the coming into force of the Environmental Enforcement Decree
Table 39:	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
Table 40:	Reasons for dismissing the Environmental Enforcement cases, received in <u>2015</u> , in which no further action was taken on <u>10 January 2016</u> , whether or not by merging with a parent case, by public prosecutor's office (and department) Source: database of the Board of Procurators General – statistical analysts
Table 41:	Reasons for dismissal for environmental enforcement cases without further action, as at 10 January 2016, received in 2015, possibly through addition to a mother case, per category of charge codes - Source: database of the Board of Procurators General - statistical analysts

Table 42:	Official reports received by the AMMC of the Department of Environment, Nature and Energy from public prosecutor's offices in the Flemish Region in 2015
Table 43:	Percentage share of official reports received by LNE-AMMC out of the total number of 'environmental enforcement' cases recorded by the public prosecutor's office
Table 44:	Percentage share of the official reports received by the LNE-AMMC in 2015, per enforcement actor
Table 45:	Percentage share of official reports received by the LNE-AMMC in 2015, per environmental theme
Table 46:	Decisions taken by the LNE-AMMC in the context of alternative administrative fines
Table 47:	Identification reports received by the AMMC per subject, in 2015
Table 48:	Decisions taken by the AMMC in the context of alternative administrative fines
Table 49:	Framework for imposing an exclusive administrative fine
Table 50:	Appeals received against decisions of the LNE-AMMC in the context of environmental offences and environmental infringements by the Environmental Enforcement Court in 2015 and the results of the processing thereof
Table 51:	Number and nature of the administrative fines imposed by the Flemish Land Agency

6.4 LIST OF RESPONDING MUNICIPALITIES

Aalst	Geetbets	Laarne	Roosdaal
Aalter	Genk	Lanaken	Ruiselede
Affligem	Ghent	Landen	Rumst
Alken	Geraardsbergen	Langemark-Poelkapelle	Schelle
Antwerp	Gingelom	Lebbeke	Scherpenheuvel-Zichem
Anzegem	Gistel	Lendelede	Schilde
Ardooie	Gooik	Lennik	Schoten
Arendonk	Grimbergen	Leopoldsburg	Sint-Amands
As	Grobbendonk	Leuven	Sint-Katelijne-Waver
Asse	Haacht	Liedekerke	Sint-Laureins
Assenede	Haaltert	Lier	Sint-Lievens-Houtem
Avelgem	Halle	Lierde	Sint-Martens-Latem
Baarle-Hertog	Ham	Lille	Sint-Niklaas
Balen	Hamme	Linkebeek	Sint-Truiden
Beernem	Hamont-Achel	Lint	Stabroek
Beerse	Harelbeke	Lintar	Staden
Beersel	Hechtel-Eksel	Lokeren	Steenokkerzeel
Begijnendijk	Heers	Londerzeel	Stekene
Bekkevoort	Heist-op-den-Berg	Lovendegem	Temse
Beringen	Hemiksem	Lubbeek	Ternat
Berlare	Herentals	Lummen	Tervuren
Bertem	Herenthout	Maarkedal	Tessenderlo
Bever	Herk-de-Stad	Maaseik	Tielt-Winge
Beveren	Herne	Malle	Tienen
Bilzen	Herselt	Mechelen	tongeren
Blankenberge	Herzele	Meerhout	Torhout
Boechout	Heusden-Zolder	Meeuwen-Gruitrode	Turnhout
Bonheiden	Heuvelland	Menen	Veurne
Boom	Hoeselt	Merchtem	Vilvoorde
Boortmeerbeek	Holsbeek	Merelbeke	Voeren

Borgloon	Hooglede	Merksplas	Vorselaar
Bornem	Hoogstraten	Mesen	Vosselaar
Borsbeek	Horebeke	Meulebeke	Waasmunster
Boutersem	Houthulst	Middelkerke	Waregem
Brakel	Hove	Mol	Wellen
Brasschaat	Huldenberg	Moorslede	Wemmel
Brecht	Hulshout	Mortsel	Wervik
Bredene	Ichtegem	Nevele	Westerlo
Bree	Ingelmunster	Niel	Wetteren
Bruges	Izegem	Nieuwpoort	Wieslbeke
Buggenhout	Kalmthout	Nijlen	Wijnegem
Damme	Kampenhout	Ninove	Willebroek
De Pinte	Kapellen	Olen	Wingene
Deerlijk	Kapelle-op-den-Bos	Oostkamp	Wommelgem
Deinze	kaprijke	Oostrozebeke	Wortegem-Petegem
Denderleeuw	Kasterlee	Opglabbeek	Zandhoven
Dendermonde	keerbergen	Opwijk	Zaventem
Dentergem	Kinrooi	Oudenaarde	Zele
Destelbergen	Kluisbergen	Oudenburg	Zelzate
Diepenbeek	Knesselare	Oud-Turnhout	Zemst
Diest	Knokke-Heist	Overijse	Zingem
Diksmuide	Koekelare	Peer	Zoersel
Dilsen-Stokkem	Koksijde	Pittem	Zomergem
Drogenbos	Kontich	Poperinge	Zonhoven
Duffel	Kortenaken	Putte	Zonnebeke
Edegem	Kortenberg	Puurs	Zoutleeuw
Eeklo	Kortesseem	Ranst	Zuienkerke
Erpe-Mere	Kraainem	Ravels	Zulte
Evergem	Kruibeke	Retie	Zwalm
Gavere	Kruishoutem	Rijkevorsel	Zwevegem
Geel	Laakdal	Roeselare	Zwijndrecht

6.5 LIST OF RESPONDING POLICE DISTRICTS

Police district Aalst	Police district Kruibeke/Temse
Police district Aarschot	Police district Leuven
Police district AMOW	Police district Lier
Police district Assenede/Evergem	Police district Lokeren
Police district Balen/Dessel/Mol	Police district Lommel
Police district Beringen/Ham/Tessenderlo	Police district LOWAZONE
Police district Berlare/Zele	Police district Maasland
Police district Bierbeek/Boutersem/Holsbeek/Lubbeek	Police district Meetjesland Centrum
Police district Bilzen/Hoeselt/Riemst	Police district MIDOW
Police district Blankenberge/Zuienkerke	Police district MINOS
Police district Bredene/De Haan	Police district MIRA
Police district BRT	Police district Neteland
Police district Bruges	Police district Noord
Police district Deinze/Zulte	Police district Noorderkempen
Police district Dendermonde	Police district Noordoost-Limburg
Police district Dijleland	Police district Oostende
Police district Druivenstreek	Police district Pajottenland
Police district Erpe-Mere/Lede	Police district Regio Turnhout
Police district Gavers	Police district RODE
Police district Geel/Laakdal/Meerhout	Police district Schelde/Leie
Police district Ghent	Police district Sint-Niklaas
Police district Grens	Police district Sint-Truiden/Gingelom/Nieuwerkerken
Police district Grensleie	Police district Spoorokin
Police district Grimbergen	Police district Tervuren
Police district Hamme/Waasmunster	Police district Tienen/Hoegaarden
Police district HANO	Police district VLAS
Police district HAZODI	Police district Voorkempen
Police district HerKo	Police district West-Limburg
Police district Het Houtsche	Police district Westkust
Police district one Heusden-Zolder	Police district Wetteren/Laarne/Wichelen
Police district KASTZE	Police district WOKRA
Police district Kempen N.O.	Police district ZARA
Police district Kempenland	Police district Zaventem
Police district Klein-Brabant	Police district Zuiderkempen
Police district K-L-M	Police district Zwijndrecht

COLOPHON

Edition September 2016

RESPONSIBLE EDITOR

Prof. Dr. Michael G. Faure LL.M.
Chairman of the Flemish High Council of Environmental Enforcement
Koning Albert II-laan 20 bus 15
1000 Brussels

EDITING

An Stas, Laïla Macharis and Mathieu Moyson
Flemish High Enforcement Council for Spatial Planning and Environment

LAY-OUT AND DESIGN

Laïla Macharis, Management Assistant of the Flemish High Enforcement
Council for Spatial Planning and Environment

This report is available on the website of the Flemish High Enforcement
Council for Spatial Planning and Environment: www.vhrm.be

Duplication is acceptable on the condition that sources are credited.

VHRM

FLEMISH HIGH
ENFORCEMENT COUNCIL FOR
SPATIAL PLANNING & ENVIRONMENT

Koning Albert II-laan 20 bus 15
1000 BRUSSELS
www.vhrm.be