



**Flanders**  
State of  
the Art

# **Environmental Enforcement Report 2019**

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## PREFACE

It is with some sadness that I announce that this environmental enforcement report, the Environmental Enforcement Report 2019, will be the last of its kind. The Flemish Coalition Agreement 2019-2024 and the Environment 2019-2024 policy memorandum stipulate that the Flemish High Enforcement Council for Spatial Planning and Environment (VHRM) is to be abolished and its tasks, which include preparing an enforcement report, will be transferred to other bodies.

Initially it was not clear whether the VHRM would still have to prepare the Environmental Enforcement Report 2019 and this has affected the normal procedure for preparing the report and consequently impacted the response rate and the content. Everything was set in motion as soon as it became clear that the VHRM could still prepare the Environmental Enforcement Report 2019, to approve the report in time and before the formal abolition of the VHRM in the summer of 2020. The uncertainty as to whether or not the report had to be prepared meant that the questionnaires, which are normally sent at the beginning of January, were not sent until the end of February and without an initial questionnaire being sent to the enforcement actors. The period for answering the questionnaires was also shorter. These factors have contributed to the fact that a lower response rate has been observed. The content of the report is also slightly different as it does not compare with previous years and is more focused on maintaining the collection of data in the hope that they will continue to contribute to a relevant evaluation of the implemented enforcement policy implemented in the future.

I take this opportunity to sincerely thank the enforcers after 11 years of activities and 11 reports. The VHRM was a network by and for all enforcers in Flanders. We followed the latest trends closely and developed products and organised conferences that were useful for enforcement actors at the different levels of government. This independent and unique network framework and consultation platform, which brought together the strengths and insights of enforcement actors, the main interest groups and the strategic advisory councils which are active in the Flemish environmental enforcement landscape, was a pioneer and an example, also at the international level. The VHRM has been able to play a pivotal role in supporting enforcement actors and developing an excellent reputation with regard to data collection, processing and reporting.

On behalf of the VHRM, I would like to thank all enforcement actors for their years of commitment and dedication to the VHRM. The VHRM could never have been what it was without all of you, the network by and for enforcers.

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

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# 1 INTRODUCTION

## 1.1 ABOLISHMENT OF THE FLEMISH HIGH ENFORCEMENT COUNCIL FOR SPATIAL PLANNING AND ENVIRONMENT

The new Flemish Coalition Agreement 2019-2024<sup>1</sup> stipulates the following regarding the Flemish High Enforcement Council for Spatial Planning and Environment:

*"We are transferring the executive task of the Flemish High Enforcement Council for Spatial Planning and Environment to the Department of Environment and Spatial Development. We are investigating how and where we can best organise policy advice of the Flemish High Enforcement Council for Spatial Planning and Environment and the forum for enforcers. We will transfer the advisory and policy tasks and the organisation of the forum for enforcers to the Environment Council and the executive tasks to the Department of Environment and Spatial Development."*

The Environment 2019-2024 policy memorandum<sup>2</sup> elaborates on this:

*"The Flemish High Enforcement Council for Spatial Planning and Environment (VHRM) was set up in 2009 to support the Flemish Parliament and the Government of Flanders with the coordination and the implementation of the environmental enforcement policy. This task was expanded to include spatial planning in 2014. In recent years, the spatial planning and environment policy fields have become more integrated. As a result, the context in which the VHRM functioned has changed significantly. Due to the changed context I am transferring the executive tasks of the VHRM to the Department of Environment and Spatial Development. As part of its policy preparation task, the department will be responsible for the effective alignment of the enforcement priorities as well as the periodic reporting tasks. I have therefore also instructed my administration to set up the necessary decretal initiatives in the short term so that all of this can be rolled out and that they can take the next enforcement programme and report to heart. I will present the enforcement priorities to my colleagues. I strongly believe in the exchange of knowledge between all actors in the field. For this reason I will set up a forum for enforcers within the Department of Environment and Spatial Development before the end of 2019. This forum acts as a network between the various enforcement actors. Exchanging information will allow the different actors to better fulfil their assignments and tasks and facilitates knowledge sharing. As soon as the Environment Council is established, I will ensure that it can fully assume its advisory duties and obligations towards these actors."*

In addition to these provisions in the Flemish Coalition Agreement and the Environment Policy Memorandum, the appointment of the members, representatives and deputies of the VHRM was not renewed in October 2019 as foreseen, but the previous appointment decision of 2014 was extended for a period of 8 months.

This means specifically that the VHRM will be abolished in the summer of 2020 after working for a term of 11 years.

Initially it was unclear whether the VHRM would still be able to prepare the Environmental Enforcement Report 2019. This has affected the report itself to a certain extent. For example this

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<sup>1</sup> <https://www.vlaanderen.be/publicaties/regeerakkoord-van-de-vlaamse-regering-2019-2024>

<sup>2</sup> <https://www.vlaanderen.be/publicaties/beleidsnota-2019-2024-omgeving>

year, no initial questionnaires were sent to the various enforcement actors to announce the preparations for the report and to allow them to prepare for the digital survey. The digital survey was not sent out as usual at the beginning of January 2020 but only at the end of February. In addition, the enforcement actors were given less time to fill in their answers. These circumstances can be cited to explain the decrease in the response rate among the various actors. The decrease in the response rate means that the data is less representative than in previous years.

This decreased representativeness, the fact that the report had to be prepared in a shorter period than for other years and the fact that this is the last report of its kind means that we chose to prepare a dedicated report for 2019 in itself, without always making a comparison with previous years. The main purpose of this report is therefore to provide continuity of data collection.

## 1.2 DECREE OF 5 APRIL 1995 GOVERNING THE GENERAL PROVISIONS ON ENVIRONMENTAL POLICY

The Flemish High Enforcement Council for Spatial Planning and Environment (VHRM) was created by the decree of 21 December 2007 supplementing the decree of 5 April 1995 governing the general provisions on environmental policy with the title XVI “Monitoring, enforcement and safety measures” or, in short the Environmental Enforcement Decree.

The VHRM was set up to support the Flemish Parliament and the Government of Flanders with the coordination and implementation of the environmental enforcement policy. With a view to a more effective enforcement of environmental legislation, the VHRM organised systematic consultation with the environment enforcement bodies. This consultation may have resulted in agreements between the various bodies. These agreements were called protocols. The VHRM was the facilitator for holding consultations with environmental enforcement bodies as well as preparing and concluding the protocols. In addition, a variety of memorandums, templates and guidelines were drawn up informally and then made available for supervisors via the Knowledge Centre on the VHRM website (accessible to enforcers)<sup>3</sup>. These documents were frequently consulted by the supervisors and were supplemented or amended where necessary within the working groups of the VHRM.

With the entry into force of certain articles of the decree of 25 April 2014 on the enforcement of the environmental permit on 6 September 2014, the Flemish High Council for Environmental Enforcement was transformed into the Flemish High Enforcement Council for Spatial Planning and Environment, or the VHRM in short. The transition of the Flemish High Council for Environmental Enforcement into the Flemish High Enforcement Council for Spatial Planning and Environment went hand in hand with the expansion of the members, representatives and alternate members of the VHRM, including a chairman with expertise in the enforcement of the Flemish Spatial Planning and members and alternate members nominated by the policy council of the Spatial Planning, Housing Policy and Immovable Heritage Policy Area and the Strategic Spatial Planning Advisory Council – Immovable Heritage.

The composition of the plenary meeting of the VHRM was laid down in the Government of Flanders Order of 17 October 2014 regarding the appointment of the members of the Flemish High Enforcement Council for Spatial Planning and Environment and updated via the Government of Flanders Order of 18 January 2019 amending the Government of Flanders Order of 17 October 2014 regarding the

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



appointment of the members of the Flemish High Enforcement Council for Spatial Planning and Environment. In view of the decision of Flemish Coalition Agreement 2019-2024 and the Environment 2019-2024 policy memorandum that abolishes the VHRM (*supra*), the appointment of the members was not renewed but only extended for a period of 8 months.<sup>4</sup> In addition to a plenary meeting, the VHRM also had several working groups that investigate special matters.

The VHRM prepared with regard to the environment an annual environmental enforcement report and a five-year environmental enforcement programme.

- ▶ The environmental enforcement programme, which for the first time has been given a time 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 website<sup>5</sup>.
  
- ▶ The environmental enforcement report contains at least a general evaluation of the regional environmental enforcement policy implemented in the previous calendar year; a specific evaluation of the commitment of the individual enforcement instruments; an overview of the cases where, within the specified period, no decision was made about the appeals against decisions on administrative measures; an evaluation of the decision-making practice of the public prosecutor's offices on whether or not to institute criminal proceedings for an established environmental offence; an overview and comparison of the environmental enforcement policy followed by the municipalities and provinces; an inventory of the insights that were gained during the enforcement and which can be used for improving environmental regulations, policy visions and policy implementation; and recommendations for the further development of the environmental enforcement policy. These environmental enforcement reports for 2009 to 2018 can be found on the VHRM website<sup>6</sup>. The Environmental Enforcement Report 2018 is an overview report that evaluates 10 years of the Environmental Enforcement Decree.

The VHRM also prepared a Spatial Planning Enforcement Report every year and coordinated the preparation of the Environmental Enforcement Programme.

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<sup>4</sup> <https://beslissingenvlaamseregering.vlaanderen.be/document-view/5DC43BA25084E7000800017C>

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

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

## 1.3 METHODOLOGY AND RELEVANCE OF THE ENVIRONMENTAL ENFORCEMENT REPORT 2019

### 1.3.1 Working method

On the basis of relevant and reliable numerical and qualitative data, the intent of this environmental enforcement report is also to give a detailed overview of the environmental policy that was implemented in the Flemish Region from 01 January 2019 to 31 December 2019.

To meet this objective and also the components laid down by decree, the VHRM has prepared a digital questionnaire, similar to the format used in previous environmental enforcement reports, for the environmental enforcement bodies and which focusses on the different assignments of these bodies. However, as mentioned earlier, this year no initial questionnaires were sent to enforcement actors and the digital survey was only sent out at the end of February 2020 instead of early January 2020.

An overview of the various bodies that were surveyed about their activities with regard to the enforcement of environmental law between 01 January 2019 and 31 December 2019 is given below.

- ▶ Department of Environment and Spatial Development – Enforcement division – Environmental Inspection;
- ▶ Department of Environment and Spatial Development – Territorial Development and Projects division, i.e. the new division in the Environment department where the former Environmental Licences Division of the Department of Environment, Nature and Energy (LNE-AMV) was transferred;
- ▶ Department of Environment and Spatial Development, the regional entity of the Enforcement division;
- ▶ Department of Environment and Spatial Development – Territorial Development, Environmental Planning and Projects of the Flemish Planning Bureau for the Environment, i.e. the new divisions in the Department of Environment and Spatial Development where the former Land and Soil Protection, Substrate and Natural Resources Service of the Department of Environment, Nature and Energy (LNE-ALBON) were transferred;
- ▶ The secretary-general of the Department of Environment and Spatial Development.
- ▶ The Public Waste Agency of Flanders (OVAM);
- ▶ the Flemish Land Agency (VLM);
- ▶ the Flemish Environment Agency (VMM);
- ▶ The Agency for Nature and Forests (ANB);
- ▶ Agency for Maritime and Coastal Services
- ▶ the Flemish Agency for Care and Health (VAZG);
- ▶ the Agency for Roads and Traffic (AWV);
- ▶ The Flemish Waterways plc (formerly Waterways and Sea Canal & NV De Scheepvaart<sup>7</sup>);
- ▶ The Department of Mobility and Public Works (MOW);
- ▶ the Flemish mayors;
- ▶ the Flemish municipalities;
- ▶ the inter-municipal associations active in environmental enforcement;
- ▶ the Flemish police zones;

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<sup>7</sup> NV De Scheepvaart changed its name on 10 February 2017 to De Vlaamse Waterweg NV (Flemish Waterways plc). Waterways and Sea Canal (Waterwegen en Zeekanaal NV) was dissolved on 1 January 2018 and acquired by De Vlaamse Waterweg NV.

- ▶ the federal police;
- ▶ the Flemish provincial governors;
- ▶ the provincial supervisors;
- ▶ the Enforcement Court (formerly the Environmental Enforcement Court);
- ▶ the public prosecutor's offices.

The uniform questionnaire was also used here to ensure that comparable information could be obtained. For example, the survey examined the number of supervisors in the organisation, the number of full-time employees (FTEs) deployed by the supervisor(s) for environmental enforcement tasks within the framework of the Environmental Enforcement Decree and the FTEs devoted to administrative support of environmental enforcement tasks by non-supervisors, the number of inspections carried out between 01 January 2019 and 31 December 2019, the number of initial official reports, the number of incident reports and the number of administrative measures and safety measures imposed. The sanctioning bodies were also asked about their activities between 01 January 2019 and 31 December 2019.

The information received via the standardised questionnaires resulted in a quantitative overview of the activities performed by enforcement bodies in 2019. These figures are represented graphically in a diagram or table together with a textual explanation. Although the various relevant bodies were officially contacted and there is an obligation to cooperate for bodies in the Flemish Region, the response is still not complete. This means that the figures are not completely representative and the conclusions must also be read in this light. It should also be noted that the figures provided are a snapshot and not always the final result of an inspection or a file. This has to do with the current deadlines and the fact that the survey covers the period from 1 January 2019 to 31 December 2019. A certain margin of error must therefore always be taken into account.

### 1.3.2 Structure

The decree clearly states the subjects that require minimum reporting. The VHRM designed the questionnaires to meet these requirements, although the sequence may differ from the listing in the Environmental Enforcement Decree.

The focus of chapter 2 is mainly on the efforts of the supervisory authorities. First an evaluation is given of the environmental enforcement policy implemented during the previous calendar year by the regional supervisors, the federal police, the Local police and the enforcement activities carried out at a local level by the provincial governors, the provincial supervisors, the mayors, the municipal supervisors and the supervisors of the inter-municipal associations. An overview will be given of the number of supervisors per organisation, the FTEs deployed by the supervisor(s) for environmental enforcement tasks within the framework of the Environmental Enforcement Decrees and the FTEs deployed for administrative support of environmental enforcement tasks by non-supervisors, and the number of inspections carried out by these supervisors in 2019. This also gives us a clear picture of the number of inspections performed per supervisor. For the Federal police and the Local police, the type of official report concerning the environment and drawn up by the police force in 2019 is reviewed.

In addition, special attention is paid to the proactive inspections carried out by the Federal police in the context of waste shipments and to the activities of supervisors appointed by the Local police. The current local enforcement policy is also evaluated. For the local enforcement policy, the presence

of the number of class 1, class 2 and class 3 establishments on the territory and the appointment of the number of local supervisors in the municipalities is also reviewed. Furthermore, the supervisory tasks performed by the Flemish cities and municipalities are also assessed.

Chapter 3 focusses on the use of individual environmental enforcement instruments by the different environmental enforcement bodies. To set clear boundaries for the concept of 'environmental enforcement instrument', a list of these instruments has been prepared on the basis of the parliamentary preparations for the Environmental Enforcement Decree. The uniform questionnaires were created on the basis of this list. It concerns the following instruments: recommendations, reminders, administrative measures (regularisation order, injunctions, administrative coercive measures or a combination of these) with or without penalty payment, safety measures, administrative fines (and expropriation of unlawful material benefits) and criminal sanctions. Administrative fines, administrative transactions and criminal sanctions will be discussed in a separate chapter, namely chapter 4 'Evaluation of the sanctioning policy implemented in the previous calendar year'. Just as in the previous Environmental Enforcement Reports, the enforcement instruments are compared with the number of inspections carried out where an infringement has been established and not in relation to the total number of inspections carried out. The official report and the incident report are also included in this specific evaluation of the use of the individual environmental enforcement instruments.

Chapter 4 'Evaluation of the sanctioning policy implemented in the previous calendar year' continues with an overview of the administrative and criminal sanctions imposed by the Flemish Land Agency (VLM) and the regional entity of the Enforcement division of the Department of Environment and Spatial Development. An overview is also provided of the activities of public prosecutor's offices and the Enforcement Court.

Other types of penalties may also be imposed, such as the municipal administrative sanctions (GAS) and fines for mandatory levies. However, these do not fall under the Environmental Enforcement Decree and will consequently not be discussed further.

The conclusion of the report (chapter 5) is an effort to establish an inventory of the insights obtained during the enforcement which can be used to improve environmental regulations, policy visions and policy implementation, and to formulate recommendations for further development of the environmental enforcement policy.

In chapter 6, the VHRM reports on its own work in 2019 on environment-related issues. Activities were carried out, both in the plenary meeting and in the working groups, that benefit environmental enforcement in the Flemish Region. These activities can be viewed in the context of the VHRM's strategic and operational plan, but can also be related to certain recommendations formulated by the VHRM in previous environmental enforcement reports and in the Environmental Enforcement Programme 2015-2019.

## 1.4 ENVIRONMENTAL ENFORCEMENT POLICY (CONTEXT JANUARY 2019 TO END SEPTEMBER 2019)

The Coalition Agreement of the Government of Flanders 2014-2019<sup>8</sup>, which applied for most of 2019 (January to the end of September), had the ambition to increase the efficiency and provide more cooperation and coordination between all services whose roles involve the enforcement of Flemish regulations and curbing violations. We also aimed to streamline procedures in existing Flemish enforcement regulations.

In addition, this coalition agreement stipulated 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 were elaborated in the enforcement programme and that the instruments of administrative enforcement were deployed optimally. The intention was also to create a solution-driven and customer-friendly environmental administration whereby the administrations identified and provided solutions to help a project progress and act as a knowledge unit that helped create support, never losing sight of the general interest. With regard to enforcement, good sense had to prevail and a solution-oriented and customer-friendly approach was paramount. The decree framework adopted also had to support and not counteract this solution-oriented working method.

The VHRM had an important supporting role in this respect. Aligning the environmental enforcement report with the Spatial Planning enforcement report as well as the coordinating role of the council in drawing up the Spatial Planning enforcement programme are an implementation of this coalition agreement.

The environment policy memorandum 2014-2019 of Flemish Minister Joke Schauvliege<sup>9</sup>, which applied for most of 2019, set out strategic and operational objectives with regard to environmental enforcement, which the VHRM played an important role in implementing.

Strategic objective 3, 'Simple and effective instruments', was especially important for enforcement as further specified in operational objective 14, 'Further development of targeted enforcement policy'.

The policy memorandum of the Flemish Minister for general government policy, Geert Bourgeois<sup>10</sup>, which applied for most of 2019, also contained related focus points with regard to enforcement, more specifically in strategic objective 1, 'A smooth and reliable service for the Government of Flanders, an innovative process management for the decision-making and elaboration of Flemish Justice'.

This strategic objective was further developed into six operational objectives, two of which related directly to enforcement policy.

On the one hand, this was elaborated in operational objective 1.4: Implementation of the cooperation agreement on criminal policy and security policy to ensure a more coherent prosecution of offences: *"Flanders has many powers in terms of criminal law, such as the environment, urban planning, employment, traffic safety, arms trade, youth protection and compulsory education. I will implement the cooperation agreement on criminal policy and security policy so that offences covered by Flemish powers relating to criminal law can be prosecuted in a more coherent way. After the sixth state*

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<sup>8</sup> <http://ebl.vlaanderen.be/publications/documents/60797>

<sup>9</sup> <http://ebl.vlaanderen.be/publications/documents/65581>

<sup>10</sup> <http://ebl.vlaanderen.be/publications/documents/65542>

*reform, Flanders will have more instruments to enforce its own regulations and to develop its own prosecution policy. I will initiate collaboration with the Board of Procurators General as soon as possible. I will actively attend the meetings of the Board of Procurators General and ensure that the policy priorities of the Government of Flanders are translated into guidelines for criminal policy as soon as possible. I will apply in this respect the principle that criminal prosecution should only be requested for the most punishable offences (criminal law as ultimate remedy). In order to prepare the guidelines for criminal policy, it is important to appoint representatives in the various thematic networks of expertise and in horizontal networks of expertise, such as criminal policy and criminal proceedings. I am strengthening collaboration with the federal level as part of the security policy and I am actively contributing to the Framework Memorandum on Integral Security and the National Security Plan. All of this is done in close consultation with my colleagues who are responsible for the matters in question. That is why I will set up a coordination mechanism within the Government of Flanders. The task of this body is to support the criminal policy and the security policy. Via the positive right of injunction, Flanders can order the public prosecutor's office, in individual cases, to prosecute a case or to appeal. I will exercise this positive right of injunction responsibly and in close consultation with the authorised ministers of the matters in question."*

On the other hand, obvious starting points could be found in operational objective 1.5 'Development of a Flemish inspection and enforcement policy' by strengthening the efficiency and coordination of all inspection and enforcement services and streamlining processes and procedures: *"I will lay the foundations for a Flemish inspection and enforcement policy, on the understanding that the separate inspectorates will continue to exist. To this end, I will carry out the recommendations of the enforcement theme audit of Audit Flanders. A project has already been started within the administration to elaborate recommendations on a cross-policy domain inspection and enforcement policy. I am investigating how the activities of this working group will continue in order to develop concrete proposals for increasing efficiency and more collaboration and alignment between all inspection and enforcement services. The guiding principle is that inspection and enforcement services in Flanders must comply with six principles of good supervision: selectivity, decisiveness, collaboration, transparency, professionalism and independent functioning. I am also setting up a specific project group to investigate how we can streamline inspection processes and procedures in the existing Flemish enforcement regulations. With regard to the inspection processes, I am thinking, for example, of the duration and frequency of inspections, joint inspections by various services, and the reduction of the supervisory burden. I am also committed to developing an administrative enforcement decree that streamlines the processes and procedures for imposing administrative fines and measures. I am increasing the customer-friendliness of inspections and reducing the supervisory burden of inspected parties. If irregularities are found during an inspection, the inspectorates shall provide information to the inspected person on how he can fulfil all obligations. Sanctions will only be imposed if the infringement persists. The option to impose an immediate sanction remains for serious infringements. I have instructed that methods to increase spontaneous compliance are inventoried based on the literature and existing practices. The inspection and enforcement services shall be systematically and structurally involved in the preparation and amendment of relevant legislation and regulations."*

In view of the above framework, the VHRM for most of 2019 (January to late September) was able to make an important contribution to the implementation of both the policy memorandum of the then

Flemish Minister for Environment, Nature and Agriculture and the policy memorandum of the then Flemish Minister for General Government Policy.

The provisions relating to the VHRM and the implications of this new policy on the VHRM and the Environmental Enforcement Report, in the new Flemish Coalition Agreement 2019-2024<sup>11</sup> and the Environment 2019-2024 policy memorandum<sup>12</sup> have already been discussed in 1.1.

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<sup>11</sup> <https://www.vlaanderen.be/publicaties/regeerakkoord-van-de-vlaamse-regering-2019-2024>

<sup>12</sup> <https://www.vlaanderen.be/publicaties/beleidsnota-2019-2024-omgeving>



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## 2 EVALUATION OF THE PURSUED ENVIRONMENTAL ENFORCEMENT POLICY

This chapter looks back on the Flemish environmental enforcement policy from 1 January 2019 to 31 December 2019. This is a report on the enforcement and supervisory activities of the various bodies active in the Flemish Region in 2019.

### 2.1 EVALUATION OF THE REGIONAL ENFORCEMENT POLICY

The following section discusses the enforcement activities of the following enforcement authorities: the Secretary-General of the Department of Environment and Spatial Development ; Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI); Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Division (formerly AMV); Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Division & the Flemish Planning Agency for the Environment (formerly ALBON); the Flemish Land Agency (VLM); Flanders Environment Agency (VMM); the Flemish Agency for Care and Health (VAZG); the Agency for Nature and Forests (ANB); the Public Waste Agency of Flanders (OVAM); the Flemish Waterways (formerly Waterways and Sea Canal (NV) and NV de Scheepvaart); the Agency for Roads and Traffic (AWV), the Maritime Access Department of the Department of Mobility and Public Works (MOW) and the Agency for Maritime and Coastal Services.

#### 2.1.1 Regional supervisors

In implementation of article 16.3.1 of the Environmental Enforcement Decree, staff members of the division and the agencies belonging to the Environment, Welfare, Public Health and Family policy areas, and Mobility and Public Works may be appointed as supervisors by the Government of Flanders. Article 16.3.2 of the Environmental Enforcement Decree stipulates that only persons who have the required qualifications and characteristics to properly fulfil the supervisory task can be appointed as supervisors.

For 2019, the secretary-general of the Department of Environment and Spatial Development announced that no supervision was carried out since, as in previous years, there were no exceptional circumstances in which his authority had to be used. The secretary-general of the Department of Environment and Spatial Development is therefore not included in the tables and graphs.

In the questionnaire, the regional supervisory bodies were asked to indicate the number of supervisors, appointed by the Government of Flanders, that they could call upon in 2019.

The following table shows the number of supervisors deployed by the regional enforcement bodies in 2019.

| Regional enforcement body   | Number of supervisors |
|---|-----------------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 12                    |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 97                    |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 3                     |
| Agency for Nature and Forests (ANB)   | 131                   |
| Flemish Waterways plc;  | 86                    |
| Agency for Roads and Traffic (AWV)  | 51                    |
| Flemish Agency for Care and Health (VAZG)   | 14                    |
| Public Waste Agency of Flanders (OVAM) <sup>13</sup>  | 159                   |
| Flemish Land Agency (VLM)   | 39                    |
| Flemish Environment Agency (VMM)  | 27                    |
| Department of Mobility and Public Works (MOW)   | 9                     |
| Agency for Maritime and Coastal Services  | /                     |
| <b>Total</b>  | <b>628</b>            |

Table 1 Number of supervisors per regional actor in 2019

It can be concluded that a total of 628 regional supervisors were appointed in 2019. The table shows the wide variety of entities within which supervisors are employed, and the differences in the number of supervisors per entity. When drawing up the Environmental Enforcement Decree, the intention was to increase the chances of identifying certain offences, such as littering, by deploying more supervisors; this approach is described as "many eyes in the field". As a result, officials outside the Environment and Spatial Planning policy area were also appointed to combat the waste problem.

### 2.1.2 Efforts related to environmental enforcement tasks

#### Time spend

As could be seen in previous environmental enforcement reports, the way in which the regional enforcement bodies organise their enforcement duties differs greatly. Certain enforcement bodies have appointed many supervisors, while their enforcement duties or powers are rather limited. There are also bodies where the supervisors work (almost) full time to perform their environmental enforcement tasks. This means that specifying the number of supervisors does not give a complete picture of the effective deployment of resources for enforcement activities. The regional supervisory bodies were therefore asked once again to indicate how many full-time equivalents employees (FTEs) were deployed for enforcement duties in 2019. Despite the fact that the Environmental Enforcement Decree does not determine how many FTEs should be deployed for enforcement tasks, the number of deployed FTEs can provide a clearer and more balanced picture of the actual effort made in the field of environmental enforcement.

The following table shows not only the total time spent on environmental enforcement tasks by the regional supervisors – in FTEs – in 2019, but also the number of FTEs deployed for administrative support of environmental enforcement tasks by non-supervisors. Administrative support for environmental enforcement tasks relates to the time spent by non-supervisors on environmental

<sup>13</sup> The Public Waste Agency of Flanders announced together with the questionnaire for the Environmental Enforcement 2019 that the comments on the figures of previous years apply again now.

enforcement related tasks. This may involve, for example, the input of data into the case monitoring system, policy support (drawing up reports and programmes), purely administrative tasks (drafting correspondence, organisation of inspections), and legal support (elaboration of internal guidelines for supervisors).

| <b>Regional enforcement body</b>  | <b>Total FTEs deployed for environmental enforcement tasks</b> | <b>FTE deployed by supervisors for environmental enforcement tasks</b> | <b>FTE deployed for administrative support of environmental enforcement tasks by non-supervisors</b> |
|---|--|--|--|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0.4  | 0.4  | 0  |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI) <sup>14</sup>  | 119.95   | 87.1   | 32.85  |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 0.35   | 0.35   | 0  |
| Agency for Nature and Forests (ANB)   | 36.7   | 36.7   | 0  |
| Flemish Waterways plc;  | 0.06   | 0.05   | 0.01   |
| Agency for Roads and Traffic (AWV)  | 5  | 4  | 1  |
| Flemish Agency for Care and Health (VAZG)   | 3.8  | 0.75   | 3.05   |
| Public Waste Agency of Flanders (OVAM)  | 10   | 8  | 2  |
| Flemish Land Agency (VLM)   | 33.3   | 33.3   | 0  |
| Flemish Environment Agency (VMM)  | 5.4  | 5.3  | 0.1  |
| Department of Mobility and Public Works (MOW)   | 0.1  | 0.05   | 0.05   |
| Agency for Maritime and Coastal Services  | /  | /  | /  |
| <b>Total</b>  | <b>215.06</b>  | <b>176</b>   | <b>39.06</b>   |

Table 2 Efforts related to environmental enforcement tasks in 2019

It was observed based on the above data that 18% of the total number of FTEs in 2019 deployed for enforcement tasks within the enforcement bodies is spent on administrative support for environmental enforcement tasks by non-supervisors and more than 80% of enforcement tasks by supervisors.

In addition, for 2019 as in previous years, there is a great diversity between the different regional supervisory bodies with regard to the number of FTEs used that were deployed on enforcement tasks. Certain bodies devote a large number of FTEs to enforcement tasks, while other environmental enforcement bodies devote only a limited number of FTEs to environmental enforcement tasks. For

<sup>14</sup>The Department of Environment and Spatial Development - Enforcement division - Environmental Inspection reported that the administrative FTEs carried out administrative work for the 3 domains (Spatial Planning, Flanders Heritage and Environmental Inspectorate) and also for fines, and they therefore cover all aspects of the Enforcement division.

example, it may be noted that more than half the total number of FTEs deployed on environmental enforcement tasks by regional enforcement bodies was devoted by the Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI), i.e. 119.95 FTEs. Other enforcement actors spent very few FTEs on enforcement duties. This can be explained by the fact that environmental enforcement is not one of their priority tasks.

### Number of inspections

In order to provide a better framework for the environmental enforcement efforts of the regional supervisory authorities, it was asked how many environmental enforcement inspections were carried out by these supervisors between 01 January 2019 and 31 December 2019. The definition of an inspection is the following: "An environmental enforcement inspection is the process of examining whether a legal person and/or a natural person who is bound by legal obligations under environmental law, actually complies with those legal obligations". The table below gives an overview of the total number of environmental enforcement inspections carried out by supervisors in 2019.

| <b>Regional enforcement body</b>  | <b>Number of environmental enforcement inspections</b> |
|---|--|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 166  |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 11,219   |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 149  |
| Agency for Nature and Forests (ANB)   | 8,638  |
| Flemish Waterways plc;  | 366  |
| Agency for Roads and Traffic (AWV)  | 297  |
| Flemish Agency for Care and Health (VAZG)   | 5,851  |
| Public Waste Agency of Flanders (OVAM)  | 2,749  |
| Flemish Land Agency (VLM)   | 5,942  |
| Flemish Environment Agency (VMM)  | 506  |
| Department of Mobility and Public Works (MOW)   | 0  |
| Agency for Maritime and Coastal Services  | /  |
| <b>Total</b>  | <b>35,883</b>  |

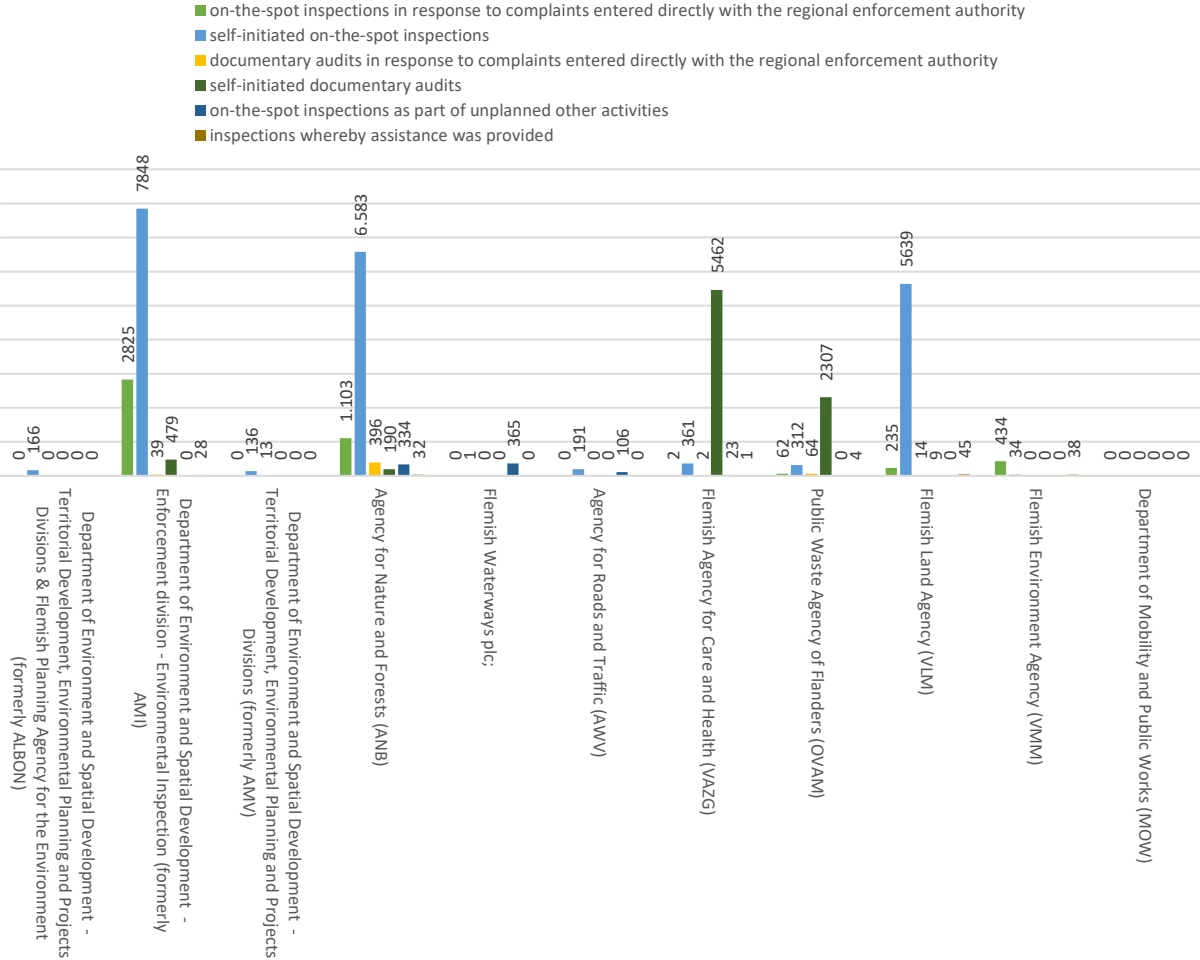
*Table 3 Total number of environmental enforcement inspections carried out by supervisors in 2019*

Based on the figures in the above table, it can be established that the regional supervisors carried out a total of 35,883 environmental enforcement inspections in 2019. Most of the inspections were carried out by the Department of Environment and Spatial Development – Enforcement division – Environmental Inspection, i.e. over 31%. In addition almost a quarter of the enforcement inspections were carried out by the Agency for Nature and Forests. These are the two enforcement actors which deployed the most FTEs on enforcement duties in 2019, respectively 119.95 and 36.7 FTEs.

### Types of inspections

New since 2016 is that the regional supervisors were also questioned on the basis of the inspections they carried out. For example, in addition to the number of environmental enforcement inspections carried out, they were asked to distinguish between the number of documentary inspections based on complaints made directly to the regional body, documentary inspections based on their own

initiative, inspections on the spot where assistance was provided, inspections on the spot during other unforeseen work, inspections on the spot based on their own initiative, and inspections on the spot based on complaints made directly to the regional body. The following graphs illustrate this classification, by body and for the total of all environmental enforcement inspections carried out.



Graph 1 Reason for inspections performed in 2019 by supervisor

Based on these data, it can be established that more than ¾ of inspections, i.e. 83%, of the total number of 35,883 environmental enforcement inspections in 2019 were self-initiated. 72% of self-initiated inspections were on-the-spot checks and 28% of the cases were documentary checks. About 17% of the total number of inspections carried out by the regional supervisory bodies were inspections in response to complaints. These reactive inspections concerned mainly on-site inspections, namely 90% of all inspections carried out in response to complaints.

For those enforcement bodies where enforcement is the main focus of the work of supervisors, the inspections in 2019 were mainly performed on their own initiative. For example, the Department of Environment and Spatial Development - Enforcement division - Environmental Inspection carried out more than 70% of the inspections on their own initiative. For the Flemish Land Agency, this percentage was even 95% and for the Agency for Nature and Forests it was 76%.

The following table not only shows the number of supervisors, the total number of FTEs deployed for enforcement duties<sup>15</sup> and the number of inspections carried out by supervisors, but also provides further insight by dividing the number of environmental enforcement inspections by the number of supervisors in order to present the average number of inspections per supervisor. An inspection often involves more than just actually performing the inspection and going to the scene, so in order to obtain a more balanced picture, the number of inspections carried out by the supervisors will be divided by the total number of FTEs assigned to enforcement tasks per regional body; this makes it possible to also propose an average number of inspections per FTE for 2019. In this way, the preparations for each inspection and the administrative processing are also taken into account.

| <b>Regional enforcement body</b>  | <b>Number of supervisors</b> | <b>Total FTEs deployed for environmental enforcement tasks</b> | <b>Number of environmental enforcement inspections</b> | <b>Average number of inspections per supervisor</b> | <b>Average number of inspections per FTE</b> |
|---|------------------------------|--|--|---|--|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 12                           | 0.4  | 166  | 14  | 415  |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 97                           | 119.95   | 11,219   | 116   | 94   |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 3                            | 0.35   | 149  | 50  | 426  |
| Agency for Nature and Forests (ANB)   | 131                          | 36.7   | 8,638  | 66  | 235  |
| Flemish Waterways plc;  | 86                           | 0.06   | 366  | 4   | 6,100  |
| Agency for Roads and Traffic (AWV)  | 51                           | 5  | 297  | 6   | 59   |
| Flemish Agency for Care and Health (VAZG)   | 14                           | 3.8  | 5,851  | 418   | 1540   |
| Public Waste Agency of Flanders (OVAM)  | 159                          | 10   | 2,749  | 17  | 275  |
| Flemish Land Agency (VLM)   | 39                           | 33.3   | 5,942  | 152   | 178  |
| Flemish Environment Agency (VMM)  | 27                           | 5.4  | 506  | 19  | 94   |
| Department of Mobility and Public Works (MOW)   | 9                            | 0.1  | 0  | 0   | 0  |
| Agency for Maritime and Coastal Services  | /                            | /  | /  | /   | /  |
| <b>Total</b>  | <b>628</b>                   | <b>215.06</b>  | <b>35,883</b>  | <b>57</b>   | <b>167</b>                                   |

*Table 4 Efforts related to environmental enforcement tasks in 2019*

Table 4 above shows that, on average, 57 inspections per supervisor were carried out in 2019. However, if this information is considered separately for the various regional supervisory authorities, the picture is more diversified. This difference could be explained, among other things, by the nature of the inspections carried out and by the fact that, for some supervisors, the enforcement of

<sup>15</sup>This concerns the FTEs deployed by supervisors for environmental enforcement tasks under the Environmental Enforcement Decree as well as the FTEs deployed for administrative support of environmental enforcement tasks by non-supervisors.

environmental law forms an almost exclusive task, while for others the enforcement forms only a small part of the employee's duties.

The average number of inspections per FTE is the total number of performed inspections compared to the total number of FTEs deployed for enforcement tasks. This indicator provides a more accurate picture of the efforts made by the regional enforcement bodies in 2019. Supervisors performed, on average, 167 inspections per FTE. For certain bodies, the average number of inspections per FTE is a fictitious scenario as less than 1 FTE was deployed for enforcement tasks within their organisation.

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 PURSUED ENVIRONMENTAL ENFORCEMENT POLICY BY THE POLICE

For the preparation of this environmental enforcement report, the Flemish High Enforcement Council for Spatial Planning and Environment once again questioned the Federal and the Local police about their environmental enforcement activities. Among other things, they asked how many official reports on environmental offences were drawn up by the Federal police and by the Local police in the Flemish Region following a finding (based on a report, complaint or offenders caught in the act of a crime) between 01 January 2019 and 31 December 2019. Further details were also requested regarding the specific environmental enforcement activities of the Federal police and the activities of supervisors appointed within the Local police zones.

### 2.2.1 General

The following table gives an overview of the type of official report drawn up by the police force regarding the environment in 2019.

| Type of Fact                               | Federal Police | Local Police  | Other     | Total         |
|--|----------------|---------------|-----------|---------------|
| Waste by professional                      | 14             | 281           | 1         | 296           |
| Waste transport                            | 8              | 44            | 0         | 52            |
| Waste: permit recognition                  | 0              | 47            | 1         | 48            |
| Waste by private person                    | 52             | 2,127         | 4         | 2,183         |
| Air pollution                              | 3              | 78            | 1         | 82            |
| Water pollution                            | 25             | 120           | 3         | 148           |
| Soil pollution                             | 3              | 72            | 1         | 76            |
| Environment: noise nuisance                | 0              | 107           | 0         | 107           |
| Environmental taxes and duties             | 1              | 20            | 0         | 21            |
| Environment flora fauna Destruction        | 0              | 176           | 0         | 176           |
| Environment flora fauna Animal Welfare     | 10             | 1,165         | 4         | 1,179         |
| Environment flora fauna Nature Protection  | 2              | 119           | 1         | 122           |
| Environment flora fauna Permit recognition | 0              | 44            | 1         | 45            |
| Environment flora fauna other              | 0              | 2             | 0         | 2             |
| Other environmental crime                  | 169            | 6,824         | 44        | 7,037         |
| <b>Total</b>                               | <b>287</b>     | <b>11,226</b> | <b>61</b> | <b>11,574</b> |

Table 5 Official reports drawn up by police services concerning the environment for the year 2019 in the Flemish Region – source: ANG

The figures include both the initial official report and the simplified official report. Such simplified official reports are mainly drawn up for minor facts with, for example, unknown perpetrators, and these are not systematically passed on to the public prosecutor's office. The fact that they also contain the simplified official reports explains the difference between the number of official reports drawn up by the police force and the number of cases received – and drawn up by the police force – by the public prosecutor's offices (see chapter 4.1.).

The figures are taken from the General National Database. The National General Database (ANG) is the set of information systems of the integrated police intended to support the assignments of



judicial or administrative police and ensure the most structured and secure information management.<sup>16</sup>

In total, 11,574 official reports were drawn up by the police force in the Flemish Region in 2019. Nearly 97% of these official reports were drawn up by the local police and nearly 2.5% by the Federal police.

More than half, i.e. 61%, of the official reports were related to 'other environmental criminality'. This includes facts that are not covered by the Environmental Enforcement Decree, such as offences in the context of fireworks fraud. The second largest category is 'waste by private persons'. This category represents nearly 19% of the total number of established offences.

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

The Flemish High Enforcement Council for Spatial Planning and Environment also surveyed the Federal police about its environmental enforcement activities for the Environmental Enforcement Report 2019. Among other things, they asked how many official reports were stored in the ANG in 2019, concerning environmental crime whereby the establishing unit belonged to the Federal police. These data were presented in 2.2.1 in table 5. In addition, they also asked how many people within the Federal police were actively involved in the enforcement of environmental law in the Flemish Region in 2019.

Within the Federal police, 104 people belonged to the Environmental Network in Flanders in 2019. The purpose of this Environmental Network is to exchange information on environmental violations, to provide mutual support, to jointly develop best practices and to conduct large-scale investigations effectively and efficiently. 194 members of the local police are also active within this network. It is true, however, that the 104 persons of the Federal police who are actively involved in environmental enforcement is both an overestimation and an underestimation. This number is simply generated by the Environmental Network database. The people in this database are not all actively engaged in environmental enforcement any more. On the other hand, it is also true that not all persons involved in environmental enforcement within the Federal police are included in this network. The 104 persons should therefore be regarded as indicative.

More precisely, 25 FTEs were actively involved in environmental enforcement in the Flemish Region within the Federal police in 2019. This concerns 4 FTEs in the Environmental Service of the Directorate for Combating Serious and Organised Crime (DJSOC/Environment), 5 FTE research capacity within the Federal Judicial Police, and 16 FTE phenomenon coordinators. These phenomenon coordinators investigate the phenomenon of environmental crime and monitor it .

The Federal police deals with supra-local phenomena that fall in the category of serious environmental crime. These include, among other things, repeated systematic actions in violation of regulations and other legal provisions; a strong interdependence with fraud; activities that take place on an organised basis, often in a business context; activities with a supra-regional distribution and international networks; activities that are aimed at substantial financial gains; and business activities that cause major and often irreparable damage to the environment and/or imminent danger to public health.

In 2019, a total of 287 official reports were included in the National General Database for environmental crime on the territory of the Flemish Region, with the establishing unit belonging to

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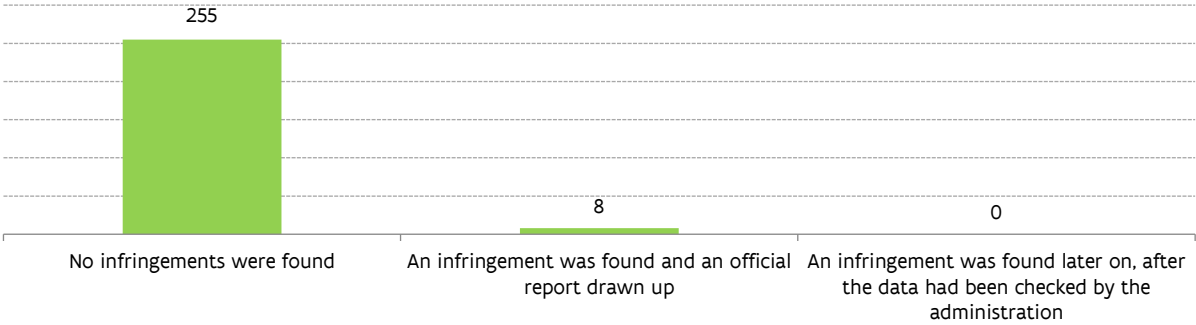
<sup>16</sup> Art. 44/7 Police Service Act.

the Federal police. These are usually the more complex environmental dossiers. The findings are the result of a complaint or report or offenders caught in the act of a crime. However, a number of cases are launched on the basis of information collected (administrative, police or judicial). These official reports dealt not only with environmental offences, but also with environment-related facts.

**Proactive inspections related to waste shipments on the territory of the Flemish Region**

In addition to the above reactive inspections, the federal police also carried out 263 proactive inspections in 2019 in the context of waste shipments on the territory of the Flemish Region. Within the Federal police, it was decided to tackle waste that poses a serious threat to public health or the environment and generates large (illegal) profits. This focus on inspections of waste shipments by the Federal police is related to the National Security Plan 2016-2019<sup>17</sup> in which the Federal Government has decided to consider waste fraud, among other things, as a priority. It should be noted that these figures for waste transport only include those shipments of waste for which an ECO form<sup>18</sup> has been drawn up 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 following graph gives an overview of the results of the 263 inspections carried out by the federal police in 2019 related to waste shipments.



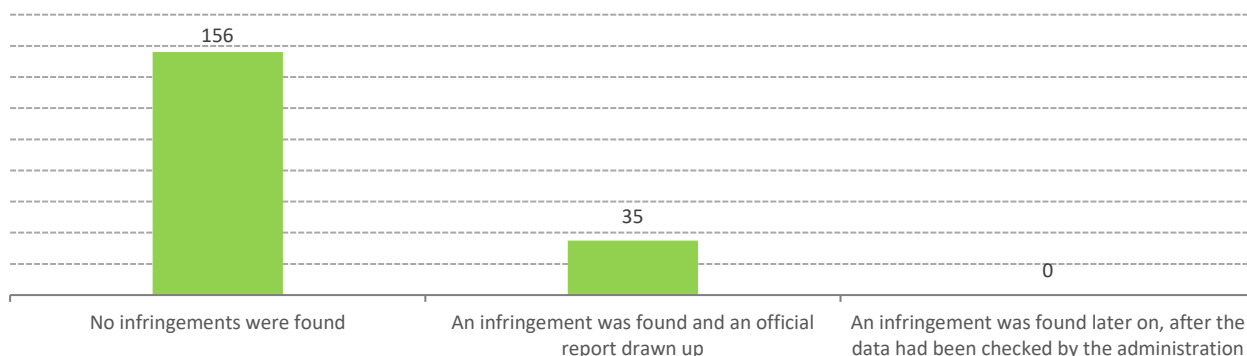
*Graph 2 Proactive inspections (reported by drawing up an ECO form) carried out by the Federal police in the context of waste shipments on the territory of the Flemish Region in 2019*

No infringements were found in 255 inspection cases. An infringement was detected during 8 inspections and an official report was drawn up immediately when the ECO form was filled. It is possible that violations were found afterwards, after the data had been checked by the administration. When completed, the ECO waste form is sent to the Environment Department of the Federal Judicial Police for further analysis.

We should also mention that the local police also carried out waste shipment inspections in 2019. In 2019, 191 waste transport checks were carried out by the local police. In the case of 156 inspections carried out in 2019, no infringements were detected. 35 official reports were drawn up at the time of filling in the ECO form. These data may also be underestimates, given that the figures for waste shipments only include those 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

<sup>17</sup> <https://www.politie.be/5998/nl/over-ons/geintegreerde-politie/het-nationaal-veiligheidsplan>  
<sup>18</sup>The police officer draws up a document called ECO waste form (EFA) for all waste shipment (including manure) inspections. This document makes it possible to track and trace part of a waste stream.

shipments of waste for which no ECO form has been prepared or submitted cannot be found in these figures.



*Graph 3 Proactive inspections (reported by drawing up an ECO form) carried out by the Local police in the context of waste shipments on the territory of the Flemish Region in 2019*

### 2.2.3 Evaluation of the pursued environmental enforcement policy by the Local police

The general section (2.2.1) on police services contains the official reports drawn up by the Local police and the Federal police in 2019 on a particular environmental theme. The activities of the supervisors of the Local police are discussed in this chapter, after the activities of the Federal police. This is due to the fact that the Local police has distinct tasks with regard to the enforcement of environmental legislation. On the one hand, police officers in some cities and municipalities have been appointed as supervisors within a police zone. On the other hand, the Local police are responsible for basic police care and, more specifically, they carry out all administrative and judicial police tasks that are necessary to inspect local events and phenomena that occur on the territory of the police zone, as well as the performance of certain police tasks of a federal nature. Of course, environmental legislation is also enforced in this context, even if it is not as a supervisor within the framework of the Environmental Enforcement Decree. Within various police zones, specialised environmental units are set up or it is decided to have one or more employees specialise in environment-related subjects. These are not always employees who have been appointed as supervisors; they may also work only as officers or agents of the judicial police. It should also be mentioned that 194 persons from the Local police belonged to the Environmental Network in 2019, as described earlier in the section on the Federal police.

The superintendents of the Flemish police zones were also asked to report about the activities of these supervisor(s) for this environmental enforcement report, only if a supervisor was appointed within the police zone. This section should be read next to the evaluation of the pursued local environmental enforcement policy (6).

In addition to appointing a municipal supervisor within its own staff or by an inter-municipal association, a choice can be made to shape municipal environmental enforcement by appointing supervisors within the Local police – possibly via a collaboration agreement. The supervisors of the Local police, just like the local supervisors appointed within the municipality itself or within an inter-municipal association, are tasked with supervising the following legislation in establishments classified in the open field and in the non-classified establishments as establishments of class 2 and 3 in the classification list of VLAREM II<sup>19</sup>:

<sup>19</sup>Until 23/2/2017 this was VLAREM I

- ▶ 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, and as regards chapter two;
- ▶ 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 decree on the Environmental Permit and title V of DABM (from 23/2/2017);
- ▶ the Manure Decree and its implementing decrees;
- ▶ the decrees implementing these acts and decrees;
- ▶ 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 of 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 the Council of 29 April 2004 on persistent organic polluted substances and amending directive 97/117/EEC;
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and the Council of 14 June 2006 on the transfer of waste materials;
- ▶ the Pesticides Decree and its implementing decrees;
- ▶ Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006.

The local supervisor may also in the case of establishments classified as class 1 establishments in accordance with Annex 1 to title II<sup>20</sup> of the VLAREM regulation – within the context of the aforementioned laws, decrees and their implementing regulations – make findings on the basis of sensory perception and investigate cases as referred to in article 16.3.14 of the Environmental Enforcement Decree.

In a similar way to the survey of municipal supervisors (see 2.3.5), the survey of police zones inquired about the number of inhabitants in the police zone, the fact whether or not the police zone can call on an appointed supervisor, the number of supervisors, the dedicated time and the notification of supervisors, and the number of inspections and findings carried out, together with the results of the inspections carried out. The results of inspections carried out will be discussed in Chapter 3 'Evaluation of the use of the individual environmental enforcement instruments and safety measures'. This section will focus on the response rate, the number of appointed supervisors in the Local police zones and the reporting to the Department of Environment and Spatial Development, the average time spent by these supervisors, the number of inspections carried out in response to complaints and the number of self-initiated inspections, the average number of inspections per supervisor and the average number of inspections per FTE.

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<sup>20</sup>From 23/02/2017

### Response of the Local police to the survey

In analogy with the previous environmental enforcement reports, a classification was chosen based on the number of inhabitants in the police zone. This means that the police zones were categorised in 5 classes.

| Police zones    | Number of police zones in the class in question | Number of responding police zones per class |
|-----------------|---|---|
| ≤ 24,999        | 7   | 2   |
| 25,000 - 49,999 | 59  | 17  |
| 50,000 - 74,999 | 22  | 11  |
| 75,000 - 99,999 | 10  | 2   |
| ≥ 100,000       | 9   | 6   |
| <b>Total</b>    | <b>107</b>                                      | <b>38</b>                                   |

*Table 6 Classification categories of the Flemish police zones including the number of police zones per class and the number of respondents per class in 2019*

The VHRM received a completed questionnaire from 38 of the 107 police zones in the Flemish Region. This represents a response rate of 35.5%. The possible reasons for this low response rate were mentioned in the introduction.

### Appointment and time spent by Local police supervisors

Article 16, §1 of the Flemish Government Order of 12 December 2008 implementing title XVI of the decree of 5 April 1995 governing the general provisions on environmental policy, in short the Environmental Enforcement Decree, stipulates that municipalities must have at least one local supervisor at their disposal. A municipality with more than three hundred class 2 establishments according to the classification list of title II of VLAREM or more than thirty thousand inhabitants if the number of establishments is insufficiently known must have at least two local supervisors at its disposal. Since it is therefore possible to appoint supervisors within the police zones, the police zones in the Flemish Region were already asked whether or not a supervisor was appointed within their police zone, how many supervisors were appointed and how much time they spent in 2019 on environmental enforcement tasks within the context of the Environmental Enforcement Decree. The following table gives an overview.

|   | ≤ 24,999    | 25,000 – 49,999 | 50,000 – 74,999 | 75,000 – 99,999 | ≥ 100,000   | Total       |
|---|-------------|-----------------|-----------------|-----------------|-------------|-------------|
| Response  | 2           | 17              | 11              | 2               | 6           | 38          |
| Police zone with appointed supervisor   | 0           | 4               | 5               | 1               | 3           | 13          |
| Police zone without appointed supervisor  | 2           | 13              | 6               | 1               | 3           | 25          |
| Number of appointed supervisors   | 0           | 5               | 10              | 1               | 17          | 33          |
| <i>Average number of supervisors per police zone</i>  | <i>0</i>    | <i>1</i>        | <i>2</i>        | <i>1</i>        | <i>6</i>    | <i>3</i>    |
| Total time spent on environmental enforcement tasks (FTE)   | 0.00        | 0.80            | 6.62            | 1.00            | 11.70       | 20.12       |
| of which FTE deployed by the supervisor for environmental enforcement duties in the context of the Environmental Enforcement Decree | 0.00        | 0.70            | 5.62            | 0.50            | 10.70       | 17.52       |
| of which FTE deployed for administrative support of environmental enforcement tasks by non-supervisors                              | 0.00        | 0.10            | 1.00            | 0.50            | 1.00        | 2.60        |
| <i>Average time spent per supervisor on environmental enforcement tasks (FTE)</i>   | <i>0.00</i> | <i>0.16</i>     | <i>0.66</i>     | <i>1.00</i>     | <i>0.69</i> | <i>0.61</i> |

Table 7 Overview of the appointment of supervisors within the local police and the efforts related to environmental enforcement tasks in 2019 (per capita)

From the table above it can be deduced that 13 of the 38 responding police zones used the services of a supervisor appointed within their own police zone in 2019. This corresponds to 34% of the total number of responding police zones.

In 2019, the total number of appointed supervisors within the Local police was 33, which corresponds to almost 3 supervisors per police zone, spread over these police zones that had in fact appointed at least one supervisor. In 2019, just over 20 FTEs were deployed on environmental enforcement tasks within police zones. This results in an average amount of time<sup>21</sup> spent per supervisor on environmental enforcement of 0.61 FTE. In general, we can conclude that the average supervisor in the local police spent more than half of his working time on environmental enforcement tasks in 2019. There was an average of 3 supervisors per police zone with an appointed supervisor in 2019 so the average time spent<sup>22</sup> was 1.83 FTEs for enforcement duties in the police zones that had appointed a supervisor within their own police zone.

#### Environmental enforcement inspections performed by Local police supervisors

To gain an insight into the activities of supervisors appointed by the Local police, the following table shows the total number of environmental enforcement inspections carried out per police zone category, as well as the average number of environmental enforcement inspections per supervisor and the average number of inspections per FTE. The survey therefore explicitly asked about the number of environmental enforcement inspections performed in the context of the Environmental Enforcement Decree by supervisors of the police zone between 01 January 2019 and 31 December 2019. The following table gives an overview of this.

<sup>21</sup>The average time spent per supervisor is the total number of reported FTEs spent on environmental enforcement tasks, divided by the total number of reported appointed supervisors.

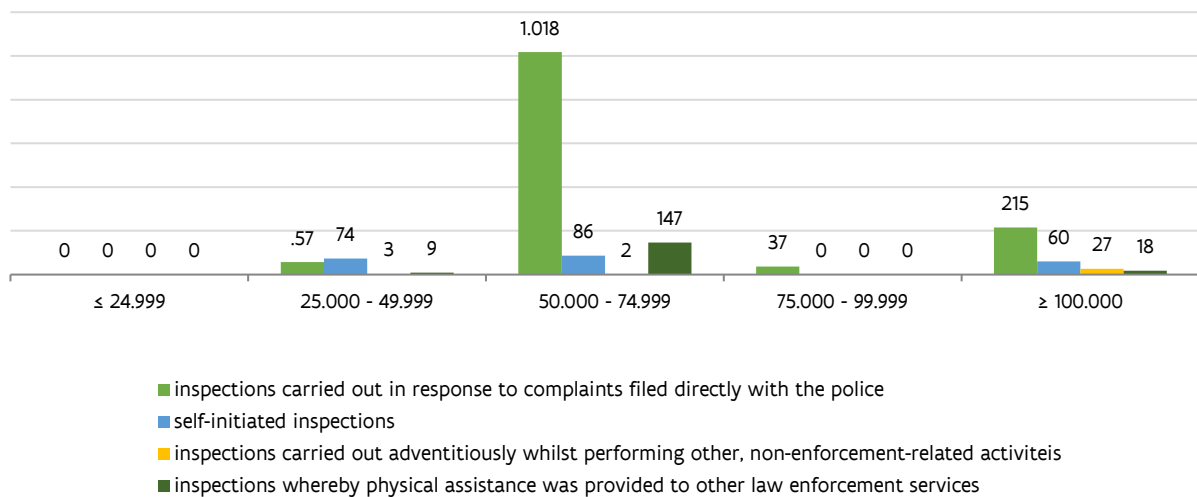
<sup>22</sup>This time spent is calculated by multiplying the average time spent per supervisor on supervisory duties by the average number of supervisors per police zone (that actually also appointed a supervisor). In this way, an overview can be given of the average FTEs deployed for environmental enforcement tasks within a police zone that actually appointed one or more supervisors.

|   | ≤ 24,999 | 25,000 - 49,999 | 50,000 - 74,999 | 75,000 - 99,999 | ≥ 100,000   | Total       |
|---|----------|-----------------|-----------------|-----------------|-------------|-------------|
| Response  | 2        | 17              | 11              | 2               | 6           | 38          |
| Number of appointed supervisors   | 0        | 5               | 10              | 1               | 17          | 33          |
| Number of environmental enforcement inspections carried out                   | 0        | 143             | 1,253           | 37              | 320         | 1,753       |
| <i>Average number of environmental enforcement inspections per supervisor</i> | <i>0</i> | <i>29</i>       | <i>125</i>      | <i>37</i>       | <i>19</i>   | <i>53</i>   |
| <i>Average time spent per supervisor on supervisory tasks (FTE)</i>           | <i>0</i> | <i>0.16</i>     | <i>0.66</i>     | <i>1</i>        | <i>0.69</i> | <i>0.61</i> |
| <i>Average number of environmental enforcement inspections per FTE</i>        | <i>0</i> | <i>179</i>      | <i>189</i>      | <i>37</i>       | <i>27</i>   | <i>87</i>   |

Table 8 Efforts with regard to environmental enforcement inspections carried out by Local police supervisors in 2019

In 2019, the 33 appointed supervisors of the local police carried out 1,753 environmental enforcement inspections. The average number of environmental enforcement inspections per supervisor was 53 in 2019. Across the various categories of police zones, the average number of inspections per FTE was 87.

The following graph gives an overview, by category, of the number of environmental enforcement inspections carried out in response to complaints and reports, the number of self-initiated inspections, e.g. as part of a planned environmental enforcement campaign, the number of inspections carried out adventitiously in the course of other non-enforcement-related activities and the number of inspections in which physical assistance was provided to other enforcement services in 2019.



Graph 4 Number and type of environmental enforcement inspections carried out in the context of the Environmental Enforcement Decree by supervisors of the Flemish police zones

The graph above shows that the majority of environmental enforcement inspections were carried out on the basis of complaints made directly to the police, namely nearly 76% of the total number of environmental enforcement inspections, or 1,327 inspections. Nearly 2% of the inspections were carried out adventitiously in the course of other non-enforcement-related activities and 12.5% of the total number of inspections were self-initiated.

## 2.3 EVALUATION OF THE PURSUED PROVINCIAL ENVIRONMENTAL ENFORCEMENT POLICY

### 2.3.1 Provincial governors

The powers of the provincial governors of the 5 Flemish provinces were very clearly defined in the Environmental Enforcement Decree. In particular, they have the power to impose administrative measures and/or safety measures in the context of:

- ▶ Article 2 of the Act of 26 March 1971 governing the protection of surface waters from pollutants;
- ▶ Article 12, §1 of the decree of 23 December 2011 concerning the sustainable management of material cycles and waste materials;
- ▶ The operation without a permit of class 2 or 3 establishments in breach of environmental requirements.

The provincial governors were asked to provide an overview of the enquiries/requests they received to impose administrative measures in 2019 as well as the number of administrative measures actually imposed in response to these enquiries/requests. In addition, they were asked to indicate how many enquiries the provincial governor received regarding the imposition of security measures and how many security measures were actually imposed.

#### **Administrative measures**

The provincial governor may be asked or requested to impose administrative measures. Enquiries about the imposition of administrative measures are understood to mean enquiries from supervisors to the provincial governor about taking administrative measures. Administrative measures may also be the result of 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 act of 12 January 1993 concerning the right of action for the protection of the environment. This request must be made by registered letter to persons authorised to impose administrative measures, in the event of a sufficiently substantiated request that demonstrates that there is an environmental infringement or environmental offence and according to a strict procedure with short terms.

The VHRM received a response from 4 provincial governors (Flemish Brabant, Antwerp, West Flanders and East Flanders) for this environmental enforcement report. The provincial governors all indicated that they had not imposed any administrative measures in 2019. It can therefore be concluded that the "enquiries/requests concerning the imposition of administrative measures" instrument addressed to the provincial governor and its effective imposition was not used. This can possibly be explained by the fact that supervisors – whether or not regional or local – are better placed to impose administrative measures themselves, since supervisors can act in complete independence and neutrality (see article 16.3.3 of the Environmental Enforcement Decree) and with the necessary expertise, qualifications and characteristics (see article 16.3.2 of the Environmental Enforcement Decree), rather than submitting a request to the provincial governor. Another or additional explanation could be that third parties who can submit requests for the imposition of administrative measures to the provincial governor are not aware of this possibility and initially choose to contact the environmental department of the municipalities or the Local police (first-line treatment) in order to contact the supervisor.



## Safety measures

Article 16.7.1 of the Environmental Enforcement Decree stipulates that safety measures are measures whereby, among other things, the provincial governor can take or impose all actions that are deemed necessary in the given circumstances to eliminate, reduce to an acceptable level or stabilise a significant risk to man or the environment. The provincial governors – and also the mayors – can take the security measures ex officio or upon the request of a supervisor. For this reason, the provincial governors were asked how many enquiries to impose security measures were submitted and how many security measures were effectively imposed by the provincial governor.

In 2019, no security measures were imposed by the provincial governors.

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

Article 16.3.1, §1, 2° of DABM stipulates that province staff members may be appointed as supervisors by the deputation. These are the so-called provincial supervisors. In accordance with this provision, the VHRM considered it appropriate to survey the court clerks of the five Flemish provinces about the appointment of these supervisors and the efforts with regard to environmental enforcement tasks.

The provincial supervisors are authorised to supervise the following regulations:

- ▶ article 3.2.1 of the coordinated Integral Water Policy Decree, as regards the category 2 and 3 unnavigable watercourses and their appurtenances, as provided for in the Act of 28 December 1967 on unnavigable 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 non-navigable watercourses;
- ▶ articles 1.3.2.2, 1.7.3.3 and 1.7.5.4 of the coordinated Integral Water Policy Decree, as regards the category 2 and 3 unnavigable watercourses and their appurtenances, as provided for in the Act of 28 December 1967 on unnavigable watercourses;
- ▶ article 138 of the Soil Decree and Title III, chapter XIII, of the VLAREBO

The provincial noise supervisors are authorised to perform supervision on the following regulations:

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

In the case of establishments classified as class 1 establishments in accordance with Annex 1 to title II 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.

As part of the survey for this environmental enforcement report, the VHRM received an answer from the three provinces regarding the provincial supervisors and their activities in 2019, namely Antwerp, West Flanders and East Flanders. The table below shows the number of supervisors and the number of FTEs deployed for enforcement duties.

|                       | Limburg | Flemish Brabant | Antwerp | East Flanders | West Flanders |
|-----------------------|---------|-----------------|---------|---------------|---------------|
| Number of supervisors | /       | 2 <sup>23</sup> | 12      | 4             | 4             |
| FTE                   | /       | /               | 1       | 0.05          | 0             |
| FTE administration    | /       | /               | 0.5     | 0.05          | 0             |

Table 9 Number of supervisors and number of FTEs deployed for enforcement duties per province in 2019

These three provinces together had 20 supervisors and a total of 1.6 FTEs were deployed for enforcement duties by the provincial supervisors and administrative support by non-supervisors. 4 supervisors were appointed in 2019 in West Flanders but no FTEs were deployed for enforcement tasks. The supervisors were appointed in the course of 2019. They are therefore new supervisors who were familiarising themselves with the work and organisation and have therefore not yet taken any action on the ground.

The following table gives an overview of the environmental enforcement inspections carried out by the provincial supervisors in 2019.

| Environmental enforcement inspections   | Limburg  | Flemish Brabant | Antwerp   | East Flanders | West Flanders |
|---|----------|-----------------|-----------|---------------|---------------|
| carried out following complaints directly to the provincial supervisors                       | /        | 0               | 7         | 3             | 0             |
| self-initiated  | /        | 0               | 28        | 0             | 0             |
| unforeseen inspections carried out in the course of other, non-enforcement related activities | /        | 0               | 0         | 65            | 0             |
| where physical assistance was provided to other enforcement services                          | /        | 0               | 0         | 0             | 0             |
| <b>Total</b>  | <b>/</b> | <b>0</b>        | <b>35</b> | <b>68</b>     | <b>0</b>      |

Table 10 The number of environmental enforcement inspections carried out by provincial supervisors in 2019

In 2019, 7 environmental enforcement inspections were carried out by the provincial supervisors in the province of Antwerp as a result of a complaint or report, and 28 inspections on their own initiative. The majority – 95.5% – of the environmental enforcement inspections carried out by the provincial supervisors of the province of East Flanders were unforeseen and performed during other, non-enforcement related activities. No environmental enforcement inspections were carried out by the appointed supervisors in the province of West Flanders.

<sup>23</sup> While this report was being prepared, it was announced that 2 provincial supervisors were appointed in the province of Flemish Brabant. They did not carry out any inspections.

### 2.3.3 Provincial powers related to unnavigable watercourses (except those included in the Environmental Enforcement Decree) of designated provincial staff (supervision not in the context of the Environmental Enforcement Decree)

In addition to the tasks of the provinces with regard to the Environmental Enforcement Decree, their responsibility as waterway manager must also be taken into account. In this context, the province also has a supervisory role for legislation that was not included in title XVI of the Environmental Enforcement Decree but for which provincial staff were appointed per province to carry out this supervisory position, namely:

- ▶ the Act of 28 December 1967 on unnavigable watercourses;
- ▶ The royal decree of 5 August 1970 governing the general police regulations for unnavigable watercourses.

The management of the non-navigable watercourses in Flanders was highly fragmented prior to 2014. 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.

These are a few important points of attention:

- ▶ 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;

Provincial water-awareness employees inform the public about these focus points during field visits. However, these violations are not covered by the DABM and if an official report were to be drawn up, this often results in a dismissal (partly because short limitation periods apply). For this reason, an official report is often not drawn up. However, a violation does result in a site visit report and the offender is informed of the violation and asked to remedy the problem.

The following table shows the number of provincial water-awareness employees, the number of FTEs spent on inspections of unnavigable watercourses in 2019, the number of official reports drawn up and the number of regularisation warnings.

|                             | Number of provincial collaborators designated to carry out inspections | Number of FTEs spent on the inspections | Number of inspections carried out | Number of official reports drawn up | Number of regularisation warnings drawn up |
|-----------------------------|--|---|-----------------------------------|-------------------------------------|--|
| Province of Limburg         | /  | /                                       | /                                 | /                                   | /  |
| Province of Flemish Brabant | /  | /                                       | /                                 | /                                   | /  |
| Province of Antwerp         | 12   | 2.5                                     | 0                                 | 0                                   | 0  |
| Province of East Flanders   | 14   | 1.6                                     | 460                               | 0                                   | 76   |
| Province of West Flanders   | 4  | 1                                       | 0                                 | 0                                   | 20   |
| <b>Total</b>                | <b>30</b>  | <b>5.1</b>                              | <b>460</b>                        | <b>0</b>                            | <b>96</b>                                  |

*Table 11 Number of inspections carried out under the Act of 28 December 1967 on unnavigable waterways and the Royal Decree of 5 August 1967 on the general police regulations for unnavigable waterways by the designated provincial staff between 01 January 2019 and 31 December 2019.*

30 provincial employees were appointed to carry out inspections in the three responding provinces in 2019. They spent a total of 5.1 FTEs to carry out 460 inspections. No official reports were drawn up as a result of these inspections. 96 regularisation warnings were drawn up in 2019.

The province of Antwerp reported that no figures were available for the number of inspections carried out regarding the law on unnavigable waterways and for the number of warnings, but that this was part of the inspectors' daily work.

## 2.4 EVALUATION OF THE PURSUED MUNICIPAL ENVIRONMENTAL ENFORCEMENT POLICY

As with the previous enforcement bodies and on the basis of the supervisory tasks performed by the Flemish cities and municipalities, an attempt is being made to provide insight into the efforts they have made in the field of local environmental enforcement.

Comparable to the Flemish provinces, the supervisory task of the Flemish cities and municipalities is twofold. This division is expressed in practice by the fact that the Environmental Enforcement Decree stipulates enforcement duties for two municipal bodies: the mayor and the municipal supervisor.

The powers of the mayors of the 300 Flemish cities and municipalities are very clearly defined in the Environmental Enforcement Decree. In particular, mayors have the power to impose safety measures and administrative measures if:

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, §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.

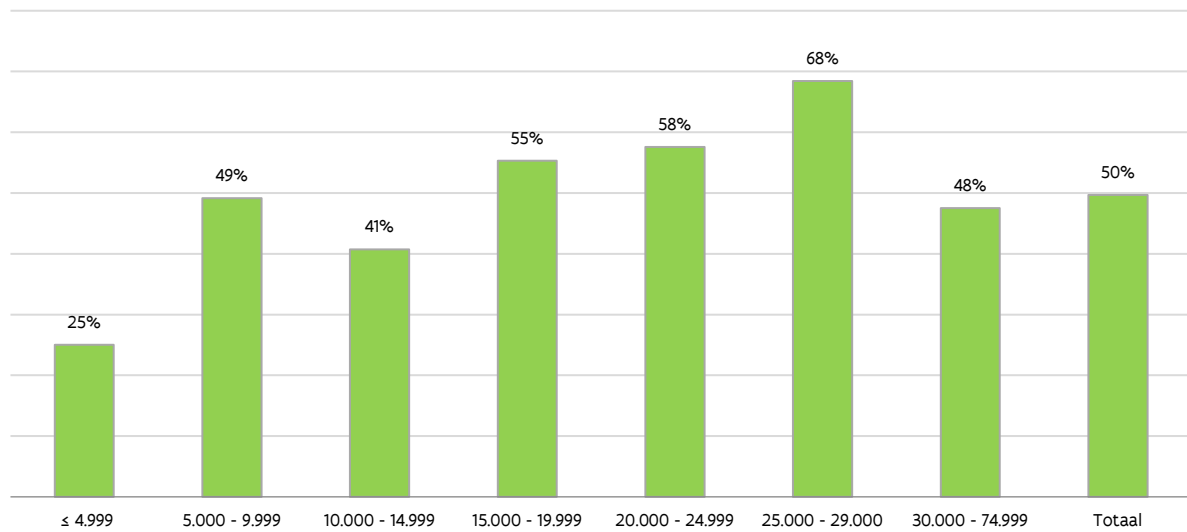
The second municipal player – the municipal supervisor – was given the same supervisory duties as the local police supervisors and the inter-municipal associations (see 2.2.3).

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 zone 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

### 2.4.1 Mayors

As in previous years, the survey of the mayors in cities and municipalities of the Flemish Region for this environmental enforcement report was in line with the survey of the municipal supervisor(s). Mayors were asked to report on their activities relating to the imposition of administrative measures and safety measures in 2018.

## Response



*Graph 5 Response rate of Flemish Cities and Municipalities per classification in 2019*

The Flemish High Enforcement Council for Spatial Planning and the Environment received a response from 149 mayors in the Flemish Region (out of a total of 300). This represents a response rate of almost 50%. The different possible reasons for this low response rate were mentioned in the introduction.

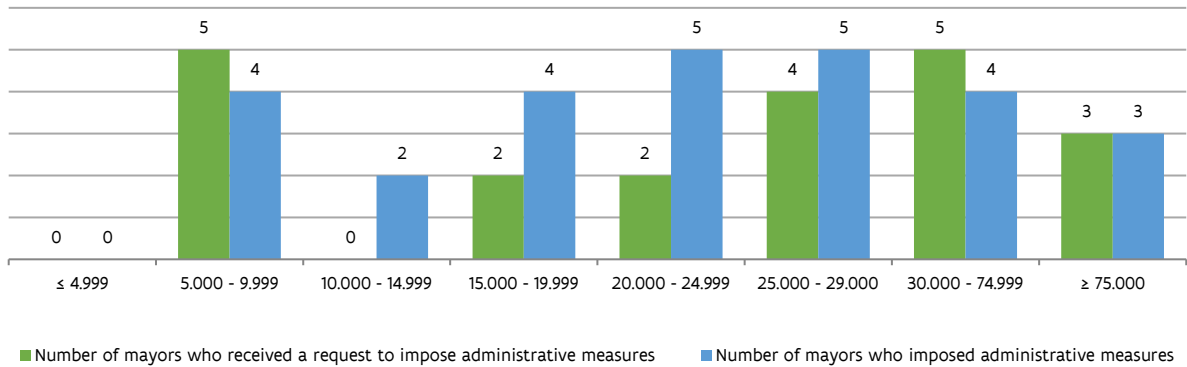
### **Administrative measures**

As already mentioned, mayors in the Flemish Region have the power to impose administrative measures. This power may be exercised in response to an enquiry or a request to that effect. However, mayors can also take administrative measures ex officio.

The term 'request for the imposition of administrative measures' relates to the requests to impose administrative measures made by regional supervisors, municipal supervisors, Local police supervisors, provincial governors, etc. to the authorised parties, including the mayor, as referred to in article 16.4.6 of the Environmental Enforcement Decree to take administrative measures.

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.

The following graph gives an overview of the number of responding mayors who received an enquiry/request to take administrative measures and the number of responding mayors who actually imposed an administrative measure in 2018.



Graph 6 The number of responding mayors who received an enquiry/request to impose administrative measures and the number of responding mayors who imposed administrative measures in 2019

The above graph shows that 21 of the 149 responding mayors received an enquiry/request to impose administrative measures in 2019. This corresponds to more than 14% of the responding mayors. The graph also shows that 27 mayors imposed administrative measures in 2019. This corresponds to more than 18% of the responding mayors.

The table below gives an overview of the number of requests for the imposition of administrative measures received by mayors from the various enforcement bodies and the number of requests for the imposition of administrative measures submitted to mayors by third parties.

| Mayor of a city/municipality with a population of: | Enquiries received by the mayor regarding the imposition of administrative measures, submitted by: |                       |                             |             |                        |                                     |           |
|--|--|-----------------------|-----------------------------|-------------|------------------------|-------------------------------------|-----------|
|  | regional supervisors   | municipal supervisors | inter-municipal partnership | police zone | provincial supervisors | requests submitted by third parties | Total     |
| ≤ 4,999  | 0  | 0                     | 0                           | 0           | 0                      | 0                                   | 0         |
| 5,000 - 9,999                                      | 0  | 0                     | 0                           | 2           | 0                      | 3                                   | 5         |
| 10,000 - 14,999                                    | 0  | 0                     | 0                           | 0           | 0                      | 0                                   | 0         |
| 15,000 - 19,999                                    | 0  | 2                     | 0                           | 0           | 0                      | 2                                   | 4         |
| 20,000 - 24,999                                    | 0  | 1                     | 1                           | 0           | 0                      | 0                                   | 2         |
| 25,000 - 29,000                                    | 0  | 2                     | 0                           | 2           | 0                      | 2                                   | 6         |
| 30,000 - 74,999                                    | 0  | 6                     | 0                           | 0           | 0                      | 10                                  | 16        |
| ≥ 75,000   | 0  | 4                     | 0                           | 0           | 0                      | 0                                   | 4         |
| <b>Total</b>                                       | <b>0</b>   | <b>15</b>             | <b>1</b>                    | <b>4</b>    | <b>0</b>               | <b>17</b>                           | <b>37</b> |

Table 12 The number of enquiries concerning the imposition of administrative measures received by mayors of Flemish cities and municipalities in 2019

In total, all the mayors together received 37 enquiries/requests for the imposition of administrative measures in 2019. Just under half, namely 46%, of the total number of enquiries/requests for the imposition of administrative measures were submitted by third parties. In addition, 40% of these 37 enquiries/requests were submitted by municipal supervisors.

The mayors of Flemish cities and municipalities were not only asked to indicate how many requests and enquiries for the imposition of administrative measures they received, but also how many administrative measures they actually imposed in that year and what kind of administrative measures.

The possible administrative measures that can be imposed are:

- ▶ injunction: this is an order from the authorised supervisor to the suspected offender to cease certain activities, work or the use of objects;
- ▶ regularisation order: this is an order from the authorised supervisor to the suspected offender to take certain measures with a view to ending an environmental infringement or an environmental crime, undoing its consequences and preventing its recurrence;
- ▶ administrative coercive measure: in this case, the authorised supervisor takes action against the identified environmental infringement and the environmental offence;
- ▶ or a combination of these measures.

The table below gives an overview of the number of administrative measures imposed by mayors in 2019. It also indicates the type of administrative measures imposed and the number of these administrative measures that were not implemented within the imposed deadline.

| Mayor of a city/municipality with a population of: | Administrative measures imposed by the mayor |                      |                                 |  |           |   |
|--|--|----------------------|---------------------------------|--|-----------|---|
|  | Injunction                                   | Regularisation order | Administrative coercive measure | Combination (injunction, regularisation, administrative) | Total     | It was not possible to carry out the measure before the required deadline |
| ≤ 4,999  | 0  | 0                    | 0                               | 0  | 0         | 0   |
| 5,000 - 9,999                                      | 3  | 2                    | 0                               | 1  | 3         | 2   |
| 10,000 - 14,999                                    | 0  | 4                    | 0                               | 0  | 4         | 0   |
| 15,000 - 19,999                                    | 2  | 3                    | 0                               | 2  | 7         | 2   |
| 20,000 - 24,999                                    | 3  | 1                    | 2                               | 1  | 7         | 0   |
| 25,000 - 29,000                                    | 2  | 4                    | 1                               | 0  | 7         | 1   |
| 30,000 - 74,999                                    | 9  | 7                    | 0                               | 2  | 18        | 2   |
| ≥ 75,000   | 3  | 1                    | 4                               | 2  | 10        | 1   |
| <b>Total</b>                                       | <b>22</b>                                    | <b>22</b>            | <b>7</b>                        | <b>8</b>   | <b>59</b> | <b>8</b>  |

Table 13 The number and type of administrative measures imposed by mayors of Flemish cities and municipalities in 2019

The table above shows that a total of 59 administrative measures were imposed by the mayors in 2019. The majority of the administrative measures imposed in 2019 were Injunction orders and regularisation orders. Each of these represented 37%. In addition, for nearly 14% of administrative measures it was not possible to enforce the imposed measure before the imposed deadline.

### Safety measures

In addition to imposing administrative measures, mayors are also authorised to impose safety measures. Safety measures are measures whereby persons as specified in article 16.4.6, including the mayor, can take or impose all actions that they deem necessary in the given circumstances to



eliminate, reduce to an acceptable level or stabilise a significant risk to man or the environment. Safety measures may include, among other things (article 16.7.2 of the Environmental Enforcement Decree):

- ▶ the suspension or execution of works, operations or activities immediately or within a specified period;
- ▶ the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon;
- ▶ the total or partial closure of an establishment;
- ▶ the confiscation, storage or removal of relevant items, including waste materials and animals;
- ▶ the prohibition or evacuation of certain areas, grounds, buildings or roads.

The following table gives an overview of the number of mayors who received a request to impose a safety measure and the number of mayors who actually imposed a safety measure in 2019, whether or not on the basis of an enquiry or on their own initiative.

| Mayor of a municipality/city with a population of: | The number of mayors who received an enquiry to impose security measures in 2019 | The number of mayors who imposed security measures in 2019 |
|--|--|--|
| ≤ 4,999  | 0  | 0  |
| 5,000 - 9,999                                      | 1  | 1  |
| 10,000 - 14,999                                    | 1  | 1  |
| 15,000 - 19,999                                    | 2  | 2  |
| 20,000 - 24,999                                    | 1  | 4  |
| 25,000 - 29,000                                    | 0  | 0  |
| 30,000 - 74,999                                    | 1  | 1  |
| ≥ 75,000   | 1  | 2  |
| <b>Total</b>                                       | <b>7</b>   | <b>11</b>  |

*Table 14 The number of responding mayors who received an enquiry to impose safety measures and the number of responding mayors who imposed safety measures in 2019*

The above table shows that 7 of the 149 responding mayors received an enquiry to impose safety measures. This corresponds to nearly 5% of the total number of responding mayors. 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 7% of the total number of responding mayors.

Mayors can impose safety measures ex officio, but they can also do so on the basis of a request from a supervisor. The table below provides an overview of the number of enquiries submitted to mayors in 2019 in the different classes of cities and municipalities and which supervisors made this enquiry.

| Mayor of a city/municipality with a population of: | Enquiries received by the mayor regarding the imposition of safety measures, submitted by: |                       |                              |             |                        |          |
|--|--|-----------------------|------------------------------|-------------|------------------------|----------|
|  | regional supervisors   | municipal supervisors | inter-municipal associations | police zone | provincial supervisors | Total    |
| ≤ 4,999  | 0  | 0                     | 0                            | 0           | 0                      | 0        |
| 5,000 - 9,999                                      | 0  | 0                     | 1                            | 0           | 0                      | 1        |
| 10,000 - 14,999                                    | 0  | 0                     | 1                            | 0           | 0                      | 1        |
| 15,000 - 19,999                                    | 0  | 2                     | 0                            | 0           | 0                      | 2        |
| 20,000 - 24,999                                    | 0  | 1                     | 0                            | 0           | 0                      | 1        |
| 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        |
| <b>Total</b>                                       | <b>0</b>   | <b>5</b>              | <b>2</b>                     | <b>0</b>    | <b>0</b>               | <b>7</b> |

*Table 15 The number of enquiries concerning the imposition of safety measures received by mayors of Flemish cities and municipalities in 2019*

The 7 mayors who received a request for the imposition of safety measures in 2019 received a total of 7 of these requests from municipal supervisors or supervisors of inter-municipal associations. The majority, i.e. 71%, were appointed by the municipal supervisors.

The mayors of Flemish cities and municipalities were not only asked to indicate how many enquiries for the imposition of safety measures they received in 2019, but also how many safety measures were actually imposed in that year and what kind of safety measures.

The table below gives an overview of the number of safety measures actually imposed by mayors and the type of safety measure that was imposed. The VHRM also asked, in analogy to the question regarding administrative measures, whether it was possible to enforce the measure by the imposed deadline.

| Mayor of a city/municipality with a population of: | the suspension or execution of works, operations or activities immediately or within a specified period | the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon | the full or partial closure of an establishment | the prohibition or evacuation of certain areas, grounds, buildings or roads | combination of previous measures | other measures than previous | Total     | made use of the right to physical assistance from the police | it was not possible to have the measure carried out within the imposed time frame |
|--|---|---|---|---|----------------------------------|------------------------------|-----------|--|---|
| ≤ 4,999  | 0   | 0   | 0   | 0   | 0                                | 0                            | 0         | 0  | 0   |
| 5,000 - 9,999                                      | 4   | 1   | 0   | 1   | 1                                | 1                            | 8         | 0  | 2   |
| 10,000 - 14,999                                    | 1   | 0   | 0   | 0   | 0                                | 0                            | 1         | 0  | 0   |
| 15,000 - 19,999                                    | 3   | 1   | 1   | 1   | 0                                | 0                            | 6         | 2  | 3   |
| 20,000 - 24,999                                    | 4   | 3   | 2   | 2   | 1                                | 1                            | 13        | 2  | 0   |
| 25,000 - 29,000                                    | 0   | 0   | 0   | 0   | 0                                | 0                            | 0         | 0  | 0   |
| 30,000 - 74,999                                    | 1   | 0   | 0   | 0   | 0                                | 0                            | 1         | 0  | 0   |
| ≥ 75,000   | 2   | 0   | 0   | 0   | 1                                | 1                            | 4         | 0  | 0   |
| <b>Total</b>                                       | <b>15</b>   | <b>5</b>  | <b>3</b>  | <b>4</b>  | <b>3</b>                         | <b>3</b>                     | <b>33</b> | <b>4</b>   | <b>5</b>  |

Table 16 The number and type of safety measures imposed by mayors of Flemish cities and municipalities in 2019

In 2019, 11 mayors imposed a total of 33 safety measures. An average of 3 safety measures per mayor were imposed in 2019.

Nearly 45% of safety measures imposed in 2019 related to the suspension or execution of works, operations or activities, immediately or within a specified period. 15% of the cases concerned the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon. Prohibition order or the evacuation of certain areas, grounds, buildings or roads was imposed 4 times in 2019 as a safety measure, which is equivalent to 12%. It can also be observed that 15% of the safety measures were not implemented within the imposed deadline.

#### 2.4.2 Municipal supervisors

To gain insight into the organisation and efforts regarding local environmental enforcement, the 300 Flemish cities and municipalities were asked 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 provides more details. This chapter attempts to sketch a picture of the municipalities' response to the VHRM's questionnaire; the number of class 1, class 2 and class 3 nuisance-causing establishments; the organisation of supervision in cities and municipalities; the number of appointed local supervisors; the appointment of supervisors and time spent on supervisory

duties; and the number of inspections carried out per municipality class, per supervisor and per FTE in 2019.

#### Response

| Municipality/city with a population of: | Number of municipalities | Number of responding municipalities |
|---|--------------------------|-------------------------------------|
| ≤ 4,999                                 | 12                       | 3                                   |
| 5,000 - 9,999                           | 59                       | 29                                  |
| 10,000 - 14,999                         | 81                       | 33                                  |
| 15,000 - 19,999                         | 47                       | 26                                  |
| 20,000 - 24,999                         | 33                       | 19                                  |
| 25,000 - 29,000                         | 19                       | 13                                  |
| 30,000 - 74,999                         | 40                       | 19                                  |
| ≥ 75,000                                | 9                        | 7                                   |
| <b>Total</b>                            | <b>300</b>               | <b>149</b>                          |

*Table 17 The number of responding municipalities per class compared to the total number of municipalities per class in 2019*

The table above shows that – in line with the response rate of mayors – 149 municipalities completed the VHRM’s questionnaire. This represents a response rate of almost 50%. The potential reasons for this low response rate were explained in the introduction.

#### Nuisance-causing plants per municipality

Cities and municipalities were asked how many class 1, 2 and 3 licensed establishments according to Annex I to title II of VLAREM are located on their territory and to give an estimate of the total number of unlicensed nuisance-causing plants in their city/municipality in 2019. The purpose of this question was to obtain more insight into the number of nuisance-causing plants per municipality, since this insight is indispensable for drawing up a sound inspection plan and for assessing and evaluating environmental monitoring efforts. In addition, the number of class 2 nuisance-causing plants is used as a criterion for determining the number of supervisors a municipality must have at its disposal. To avoid confusion, the term unlicensed nuisance-causing plant is defined as follows: 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.

The following table shows the total number of class 1, 2 and 3 nuisance-causing plants and the estimated number of unlicensed nuisance-causing plants for 2019. It should be noted that on 23 February 2017, about 5,000 of the 20,000 class 1 establishments were reclassified as class 2 establishments.<sup>24</sup> This means that supervision of all these businesses was transferred from the regional supervisors to the municipal supervisors. The table also shows an average number of nuisance-causing plants per classification class and the number of municipalities that do not know the number of nuisance-causing or unlicensed plants on their territory.

<sup>24</sup> Request for an explanation by Wilfried Vandaele to Flemish minister Joke Schauvliege about “environmental enforcement”, Fl.Parl., discussed in the Commission for Environment, Nature, Spatial Planning, Energy and Animal Welfare, 24 January 2017.

| Number of inhabitants | Number of inhabitants per inhabitants class | Class 1 establishments           |                                 |  | Class 2 establishments           |                                 |  | Class 3 establishments           |                                 |  | Unlicensed establishments i      |                                 |   |
|-----------------------|---|----------------------------------|---------------------------------|--|----------------------------------|---------------------------------|--|----------------------------------|---------------------------------|--|----------------------------------|---------------------------------|---|
|                       |   | Total number according to survey | Average number per municipality | Number of municipalities that do not know the number of class 1 establishments | Total number according to survey | Average number per municipality | Number of municipalities that do not know the number of class 2 establishments | Total number according to survey | Average number per municipality | Number of municipalities that do not know the number of class 3 establishments | Total number according to survey | Average number per municipality | Number of municipalities that does not know the number of unlicensed establishments or indicated that there were no unlicensed establishments |
| ≤ 4,999               | 3   | 9                                | 3                               | 0  | 52                               | 17                              | 0  | 38                               | 13                              | 0  | 15                               | 8                               | 1   |
| 5,000 - 9,999         | 29  | 520                              | 29                              | 11   | 2,048                            | 120                             | 12   | 6,185                            | 364                             | 12   | 157                              | 13                              | 17  |
| 10,000 - 14,999       | 33  | 894                              | 39                              | 10   | 3,951                            | 180                             | 11   | 7,025                            | 370                             | 14   | 170                              | 14                              | 21  |
| 15,000 - 19,999       | 26  | 905                              | 48                              | 7  | 2,503                            | 139                             | 8  | 7,997                            | 500                             | 10   | 241                              | 27                              | 17  |
| 20,000 - 24,999       | 19  | 1,068                            | 71                              | 4  | 3,425                            | 228                             | 4  | 13,590                           | 971                             | 5  | 245                              | 31                              | 11  |
| 25,000 - 29,000       | 13  | 584                              | 65                              | 4  | 1,903                            | 211                             | 4  | 5,800                            | 644                             | 4  | 465                              | 66                              | 6   |
| 30,000 - 74,999       | 19  | 1,353                            | 104                             | 6  | 4,221                            | 352                             | 7  | 12,245                           | 1,113                           | 8  | 3,110                            | 389                             | 11  |
| ≥ 75,000              | 7   | 762                              | 152                             | 2  | 4,324                            | 865                             | 2  | 14,131                           | 2,826                           | 2  | 52                               | 17                              | 4   |
| <b>Total</b>          | <b>149</b>                                  | <b>6,095</b>                     | <b>58</b>                       | <b>44</b>  | <b>22,427</b>                    | <b>222</b>                      | <b>48</b>  | <b>67,011</b>                    | <b>713</b>                      | <b>55</b>  | <b>4,455</b>                     | <b>73</b>                       | <b>88</b>   |

Table 18 The number of nuisance-causing plants per municipalities class in 2019

It is extremely important for cities and municipalities to gain insight into the number of establishments on their territory, not only for planning their own environmental enforcement efforts, but also in order to comply with legal and statutory obligations. As already mentioned, municipalities with more than three hundred class 2 establishments must have two supervisors at their disposal since 1 May 2011. This is discussed further in the context of the 'number of appointed local supervisors'.

The table above shows that in 2019, 105 out of a total of 149 responding municipalities had 6,095 class 1 establishments on their territory. However, 44 municipalities reported that they have no information about the number of class 1 establishments on their territory. This means that, on the basis of the response, a municipality in the Flemish Region has an average of 58 class 1 establishments. However, if we look at the different classes of inhabitants separately, this average is much more differentiated. The municipalities in the smallest population group have on average only 3 class 1 establishments, while in the cities in the largest population group this increases to 152 class 1 establishments.

With regard to class 2 establishments, 101 of the 149 responding municipalities together had 22,427 class 2 establishments on their territory, which represents an average of 222 class 2 establishments per municipality. The table reveals that the picture is quite different if you consider the different inhabitant classes. The smallest municipalities had an average of 17 class 2 establishments and the largest had an average of no fewer than 865. As with class 1 establishments, the number of class 2 establishments increases overall as the number of inhabitants increases. With regard to class 2 establishments, 48 municipalities indicated that they did not know this number.

With regard to class 3 establishments, the number of municipalities that do not know the number of class 3 establishments on their territory is higher than for class 1 and class 2 and amounts to 37% of the number of responding municipalities. In 2019, the other 94 responding municipalities together had 67,011 class 3 establishments on their territory, i.e. 713 per municipality.

For 2019, 61 of a total of 149 responding municipalities indicated that they were aware of a total of 4,455 unlicensed establishments on their territory. As stated earlier, these are 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 73 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 88 responding municipalities indicated that they did not know the number of unlicensed establishments or that they did not have unlicensed establishments on their territory. For this reason, it is recommended once again that these municipalities also 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 Government of Flanders Order of 12 December 2008 implementing title XVI of the decree of 5 April 1995 governing the general provisions on environmental policy, stipulates that municipalities must have at least one local supervisor at their disposal at the latest one year after the aforementioned decree comes into effect. Within two years of the coming into force of this decree, which was on 1 May 2011, a municipality with more than three hundred class 2 establishments according to the classification list, or with more than thirty thousand inhabitants if the number of establishments is insufficiently known, must have two local supervisors at its disposal. The collected data can be used to analyse to what extent the municipalities in the Flemish Region complied with

these provisions of the Environmental Enforcement Decree on the appointment of supervisors in 2019.

The following tables show to what extent municipalities had sufficient supervisors their disposal in 2019 – both on the basis of the number of nuisance-causing class 2 plants and on the basis of the number of inhabitants.

| Appointment of supervisors based on the number of nuisance-causing plants | number of municipalities |                   |                           |
|---|--------------------------|-------------------|---------------------------|
|   | without supervisors      | with 1 supervisor | with $\geq 2$ supervisors |
| > 300 nuisance-causing plants in class 2                                  | 1                        | 5                 | 18                        |
| < 300 nuisance-causing plants in class 2                                  | 15                       | 29                | 33                        |
| do not know the number of nuisance-causing plants                         | 6                        | 13                | 29                        |
| <b>Total</b>  | <b>22</b>                | <b>47</b>         | <b>80</b>                 |

Table 19 Appointment of local supervisors based on the number of nuisance-causing plants in 2019

If the number of nuisance-causing plants is taken as a criterion for determining the number of supervisors that a municipality must have at its disposal – whether or not appointed within its own municipality, an inter-municipal association, or a police zone – it can be concluded from the table above that a minimum of 22 and a maximum<sup>25</sup> of 35 of the responding municipalities could not call on sufficient supervisors. This corresponds to minimum 15% and maximum 23.5% of the total number of responding municipalities.

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

| Appointment of supervisors based on number of nuisance-causing establishments | number of municipalities |                   |                           |
|---|--------------------------|-------------------|---------------------------|
|   | without supervisors      | with 1 supervisor | with $\geq 2$ supervisors |
| $\leq 4,999$  | 3                        | 0                 | 0                         |
| 5,000 - 9,999   | 4                        | 12                | 13                        |
| 10,000 - 14,999   | 4                        | 12                | 17                        |
| 15,000 - 19,999   | 6                        | 8                 | 12                        |
| 20,000 - 24,999   | 2                        | 8                 | 9                         |
| 25,000 - 29,000   | 0                        | 4                 | 9                         |
| 30,000 - 74,999   | 3                        | 3                 | 13                        |
| $\geq 75,000$   | 0                        | 0                 | 7                         |
| <b>Total</b>  | <b>22</b>                | <b>47</b>         | <b>80</b>                 |

Table 20 Appointment of local supervisors based on the number of inhabitants in 2019

As in the previous table, this table shows that 22 responding municipalities did not have a supervisor at their disposal in 2019. This corresponds to 15% of the total number of responding municipalities.

<sup>25</sup> Taking into account the 16 municipalities that had one supervisor at their disposal and have no idea about the number of nuisance-causing plants 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.

If the number of inhabitants is used as a criterion for determining the statutory required number of supervisors, all municipalities with more than 30,000 inhabitants should be able to call on at least 2 supervisors. The table shows that, in the second largest class (municipalities with a population of 30,000 to 74,999), 3 municipalities had only one supervisor at their disposal in 2019. This means that 2% of responding municipalities with more than 30,000 inhabitants did not yet comply with the provision that at least two supervisors must be available in 2019. In addition, it was found that 22 other municipalities did not have a supervisor at their disposal. This means that in 2019 a total of 25 municipalities did not yet comply with the provisions of the Environmental Enforcement Decree in 2019, which represents 17% of the total number of responding municipalities.

#### **Appointment and time spent by municipal supervisors**

The municipalities and cities in the Flemish Region were asked how many supervisors were appointed in their own municipalities in 2019, how many FTEs they had spent on environmental enforcement tasks, and how many FTEs were spent in their own municipalities on administrative support for environmental enforcement tasks by non-supervisors.

The table below gives an overview of the appointment and time spent by municipal supervisors per municipality class in 2019.



| Number of inhabitants | Response   | Municipality with appointed municipal supervisor | Municipalities without appointed supervisor | Total number of appointed municipal supervisors | Average number of supervisors per municipality | Time spent on supervisory activities (FTE) |  |  | Average time spent by supervisors on supervisory tasks (FTE) |
|-----------------------|------------|--|---|---|--|--|--|--|--|
|                       |            |  |   |   |  | Total FTE                                  | by supervisors on environmental enforcement tasks in the context of the Environmental Enforcement Decree | administrative support of environmental enforcement tasks by non-supervisors |  |
| ≤ 4,999               | 3          | 0  | 3   | 0   | 0.00   | 0.00                                       | 0.00   | 0.00   | 0.00   |
| 5,000 - 9,999         | 29         | 25   | 4   | 14  | 0.56   | 1.07                                       | 0.86   | 0.21   | 0.08   |
| 10,000 - 14,999       | 33         | 29   | 4   | 26  | 0.90   | 2.34                                       | 1.40   | 0.94   | 0.09   |
| 15,000 - 19,999       | 26         | 20   | 6   | 18  | 0.90   | 1.75                                       | 1.15   | 0.6  | 0.10   |
| 20,000 - 24,999       | 19         | 17   | 2   | 16  | 0.94   | 2.22                                       | 1.61   | 0.61   | 0.14   |
| 25,000 - 29,000       | 13         | 13   | 0   | 16  | 1.23   | 3.00                                       | 1.65   | 1.35   | 0.19   |
| 30,000 - 74,999       | 19         | 16   | 3   | 26  | 1.63   | 4.22                                       | 3.36   | 0.86   | 0.16   |
| ≥ 75,000              | 7          | 7  | 0   | 27  | 3.86   | 19.14                                      | 16.17  | 2.97   | 0.71   |
| <b>Total</b>          | <b>149</b> | <b>127</b>                                       | <b>22</b>                                   | <b>143</b>                                      | <b>1.13</b>                                    | <b>33.74</b>                               | <b>26.20</b>   | <b>7.54</b>  | <b>0.24</b>  |

Table 21 Appointment and time spent by municipal supervisors per municipalities class in 2019

In 2019, 143 municipal supervisors were appointed in 127 municipalities. This amounts to an average of 1.13 municipal supervisors per municipality with an appointed municipal supervisor.

However, the average of 1.13 municipal supervisors per municipality with an appointed supervisor changes significantly as soon as the different classes of municipalities are considered. The average number of supervisors per municipality in the smallest classes is 0 or barely 1, while this average rises to 3.86 in the larger cities. This means that the larger the population, the more supervisors were appointed within the municipalities.

In the 127 municipalities that had a total of 143 municipal supervisors at their disposal in 2019, a total of 33.74 FTEs was spent on environmental enforcement tasks, of which approximately 76% by supervisors on environmental enforcement tasks in this context of the Environmental Enforcement Decree and approximately 24% on administrative support for environmental enforcement tasks by non-supervisors.

The average time spent<sup>26</sup> per municipal supervisor on environmental enforcement tasks (this includes the FTEs spent on administrative support) was 0.24 FTEs in 2019. This means that the average municipal supervisor was deployed for 1/4 (19%) to carry out environmental enforcement duties in the context of the Environmental Enforcement Decree. As there is an average of 1.13 supervisors per municipality, the average time spent<sup>27</sup> was 0.27 FTEs on enforcement duties 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 2019, the average time spend per municipal supervisor on environmental enforcement tasks was 0.24 FTEs. In the largest municipalities (municipalities class with more than 75,000 inhabitants), the supervisor spent an average of 71% of his time on environmental enforcement duties, and the average time spent by these municipalities on environmental enforcement duties totalled 2.7 FTEs. However, both the average amount of time spent per municipal supervisor and the amount of time spent per municipality drops sharply as the number of inhabitants decreases.

### **Environmental enforcement inspections**

To gain insight into the activities of municipal supervisors in 2019, the table below shows the total number of environmental enforcement inspections carried out per municipalities class. In addition, the table also shows the time spent by supervisors on supervisory tasks in FTEs, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE. The results of these inspections are then discussed during the evaluation of the individual enforcement instruments in chapter 3. These figures take into account the total time spent on environmental enforcement tasks by municipalities, i.e. the FTEs deployed for enforcement tasks by the municipal supervisors as well as the FTEs spent on administrative support for environmental enforcement tasks. The purpose of this is to provide a more complete picture of how an inspection is performed.

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<sup>26</sup>The average time spent per supervisor is the total number of reported FTEs spent on environmental enforcement tasks, divided by the total number of reported appointed supervisors.

<sup>27</sup> This time spend is calculated by multiplying the average time spent per supervisor on supervisory duties by the average number of municipal supervisors per municipality that actually also had a supervisor at its disposal. In this way, an overview can be given of the average FTEs deployed for environmental enforcement tasks in a municipality that actually appointed one or more supervisors.

| Number of inhabitants | Response   | Number of appointed supervisors per municipality | Total time spent on environmental enforcement tasks in FTEs | Number of environmental enforcement inspections carried | Average number of environmental enforcement inspections per | Average time spent by supervisors on supervisory tasks (FTE) | Average number of environmental enforcement inspections per FTE |
|-----------------------|------------|--|---|---|---|--|---|
| ≤ 4,999               | 3          | 0  | 0.00  | 0   | 0   | 0.00   | 0   |
| 5,000 - 9,999         | 29         | 14   | 1.07  | 105   | 8   | 0.08   | 98  |
| 10,000 - 14,999       | 33         | 26   | 2.34  | 251   | 10  | 0.09   | 107   |
| 15,000 - 19,999       | 26         | 18   | 1.75  | 159   | 9   | 0.10   | 91  |
| 20,000 - 24,999       | 19         | 16   | 2.22  | 183   | 11  | 0.14   | 82  |
| 25,000 - 29,000       | 13         | 16   | 3.00  | 200   | 13  | 0.19   | 67  |
| 30,000 - 74,999       | 19         | 26   | 4.22  | 495   | 19  | 0.16   | 117   |
| ≥ 75,000              | 7          | 27   | 19.14   | 1,701   | 63  | 0.71   | 89  |
| <b>Total</b>          | <b>149</b> | <b>143</b>                                       | <b>33.74</b>  | <b>3,094</b>  | <b>22</b>   | <b>0.24</b>  | <b>92</b>   |

Table 22 Efforts related to environmental enforcement tasks of municipal supervisors per municipalities class in 2019

This table shows that the 143 municipal supervisors – whereby a total of 33.74 FTEs was spent on environmental enforcement tasks – together carried out 3,094 environmental enforcement inspections in 2019. This corresponds to an average number of environmental enforcement inspections of almost 22 per supervisor and an average number of environmental enforcement inspections of almost 92 per FTE. This means that if every supervisor could focus full-time on environmental enforcement tasks, a total of 13,156 environmental enforcement inspections would be carried out by the 143 appointed municipal supervisors. Because supervisors can only spend nearly 1/4 of their time on enforcement activities on average, a total of only 3,094 inspections were carried out. This data would make it possible to argue for an amendment of the Environmental Enforcement Decree and the Environmental Enforcement Order in the sense that it is not the number of supervisors per municipality that is specified but the number of FTEs that should be deployed for enforcement tasks.

A more mixed picture can be seen if we look at the number of environmental enforcement inspections carried out, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE per category of municipalities. For all categories, the average number of environmental enforcement inspections per FTE is always higher than the average number of inspections (except for the smallest category where no supervisors had been appointed in the responding municipalities and therefore no environmental enforcement inspections were carried out in 2019.). This is due to the fact that the appointed supervisors only spent a limited proportion of their time on environmental enforcement duties in the context of the Environmental Enforcement Decree.

For 2019, municipalities were asked to indicate how many self-initiated environmental enforcement inspections were carried out in response to complaints and reports, for example on the basis of an environmental enforcement programme, at the request of another public authority and at the request of the police zone. This is presented in the following table.

| Number of inhabitants | Total number of environmental enforcement inspections carried out | Number of environmental enforcement inspections: |                                       |  |                                   |
|-----------------------|---|--|---------------------------------------|--|-----------------------------------|
|                       |   | self-initiated                                   | in response to complaints and reports | at the request of another public authority | at the request of the police zone |
| ≤ 4,999               | 0   | 0  | 0                                     | 0  | 0                                 |
| 5,000 - 9,999         | 105   | 7  | 83                                    | 11   | 4                                 |
| 10,000 - 14,999       | 251   | 35   | 201                                   | 1  | 14                                |
| 15,000 - 19,999       | 159   | 37   | 98                                    | 17   | 7                                 |
| 20,000 - 24,999       | 183   | 26   | 129                                   | 11   | 17                                |
| 25,000 - 29,000       | 200   | 33   | 138                                   | 15   | 14                                |
| 30,000 - 74,999       | 495   | 74   | 355                                   | 29   | 37                                |
| ≥ 75,000              | 1,701   | 662  | 886                                   | 83   | 70                                |
| <b>Total</b>          | <b>3,094</b>  | <b>874</b>                                       | <b>1,890</b>                          | <b>167</b>                                 | <b>163</b>                        |

*Table 23 The number of environmental enforcement inspections and reason for inspections carried out by municipal supervisors under the Environmental Enforcement Decree*

In 2019, a total of 3,094 environmental enforcement inspections were carried out by provincial supervisors. The majority of these inspections, i.e. 61% were carried out following complaints and reports, and approximately 28% of these inspections were self-initiated, proactive inspections, possibly in the context of planned actions or an environmental enforcement programme. In addition, 5% of inspections were carried out at the request of another public authority and 5% at the request of the police zone. It can therefore be concluded that the municipal supervisors work reactively to a large extent.

### 2.4.3 Inter-municipal associations

Article 16.3.1, §1, 4° of the Environmental Enforcement Decree provides for members of an inter-municipal association to be appointed as supervisors. Such a supervisor can only exercise supervision in the municipalities belonging to the inter-municipal association. According to article 16, §2 of the Environmental Enforcement Order, every inter-municipal association that appoints supervisors must appoint at least two supervisors for each tranche of five municipalities that has been started and that uses the services of the inter-municipal association's supervisors for the entire package of supervisory duties.

Since the Environmental Enforcement Decree entered into force in 2009, the role played by inter-municipal associations in the environmental enforcement landscape has increased steadily. Organising the supervision of environmental legislation within the framework of an inter-municipal association presents a number of advantages. For example, it may be interesting for smaller municipalities to organise themselves in this way. The appointment of an inter-municipal supervisor could lead to an increase in scale in terms of expertise and the spatial deployability of the supervisor. Given that, at present, the position of supervisor does not have to be a full-time equivalent job and that the position in smaller municipalities is often combined with other tasks, the appointment of a full-time equivalent (which is not always the case in practice) can only increase the knowledge and expertise of this supervisor in an inter-municipal association.

In addition, it may be a good idea to appoint several supervisors in a single inter-municipal association so that inter-municipal supervisors no longer have to carry out inspections in 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 nine inter-municipal associations. Eight of these nine inter-municipal associations had appointed at least one supervisor within their association and reported that (some of) the municipalities affiliated with the association (partially) made use of the inter-municipal partnership for environmental enforcement. The nine inter-municipal associations reported that an employee had almost completed the supervisor training and that starting up the inter-municipal enforcement was included in the annual programme. The environmental enforcement activities of the eight inter-municipal associations with an appointed supervisor will be discussed in this section.

A first inter-municipal association provides support to 11 of the 21 affiliated municipalities for environmental enforcement. In 2019, 1 supervisor was appointed within this inter-municipal association and 0.3 FTE was spent on environmental enforcement by this supervisor. In addition, 0.05 FTE of administrative support for environmental enforcement was provided by non-supervisory bodies. 15 inspections were carried out on site, all at the request of another public sector body. During these inspections, 2 recommendations were made and 1 infringement was reported for 14 inspections. With regard to these infringements, 4 warnings were issued, 3 priority official reports and 2 non-priority official reports were drawn up.

A second inter-municipal association provides support for enforcement to 21 of a total of 28 affiliated municipalities. Four supervisors were appointed in 2019, who together spent 0.2 FTEs on environmental enforcement tasks. In addition, 0.1 FTE of administrative support for environmental enforcement was provided by non-supervisory bodies. 18 inspections were carried out on site at the request of another public sector body, 1 inspection was carried out adventitiously while other, non-enforcement related activities were being performed; assistance was provided to another enforcement service by the supervisor(s) during 1 inspection. During these inspections, 64 recommendations were made and 84 infringements were identified, mainly concerning water. Furthermore, of the identified violations, 13 warnings were issued and 7 non-priority official reports were drawn up. In 2019, 1 administrative measure was imposed.

A third inter-municipal association provided support for enforcement to 3 affiliated municipalities in 2019. In 2019, one inter-municipal supervisor was appointed who spent 0.7 FTE on environmental enforcement tasks. 0.5 FTE was provided for administrative support. A total of 16 environmental enforcement inspections were carried out in 2019 of which 75% were on-site at the request of another public sector body, 2 self-initiated, and 2 where assistance was provided by the inter-municipal supervisor. During these inspections, 16 recommendations were made and 14 infringements were identified. With regard to these infringements, 12 warnings were issued, 3 priority official reports and 2 non-priority official reports were drawn up. 1 administrative measure was imposed.

A fourth inter-municipal association provides environmental enforcement support to 17 affiliated municipalities. In 2019, 3 supervisors were appointed within this inter-municipal association and 1.4 FTE was spent on environmental enforcement by these supervisors. In addition, 0.1 FTE of administrative support for environmental enforcement was provided by non-supervisory bodies. 98 inspections were carried out, all at the request of another public authority. No infringements were found in 55 inspection cases. In 2019, 1 recommendation was given. Infringements were established during 43 other inspections. 43 warnings were given. In addition, 3 priority official reports were also drawn up. Three administrative measures were imposed (regularisation orders). For 1 administrative measure, it was not possible to have the measure carried out within the imposed time frame

A fifth inter-municipal association provides environmental enforcement support to 12 of the 21 affiliated municipalities. In 2019, 1 supervisor was appointed within this inter-municipal association and 0.4 FTE was spent on environmental enforcement by these supervisors. 35 inspections were carried out at the request of another public sector body. In addition, 5 inspections were self-initiated. No infringements were found in 12 inspection cases. 12 recommendations were made. A violation was detected in 28 inspections. 7 warnings were given. No administrative or safety measures were imposed.

A sixth inter-municipal association provides enforcement support for 4 affiliated municipalities. One supervisor was appointed in 2019 who spent 0.2 FTEs on environmental enforcement tasks. In addition, 0.1 FTE was spent on administrative support of the enforcement tasks. 33 inspections were carried out at the request of another public sector body and assistance was provided by the inter-municipal supervisor for 4 inspections. An infringement was established in 37 inspections. 15 warnings were issued and 5 priority and 1 non-priority official reports were drawn up. No administrative or safety measures were imposed.

A seventh inter-municipal association provides environmental enforcement support to 18 of the 30 affiliated municipalities. In 2019, 6 inter-municipal supervisors were appointed and together they spent 2.5 FTEs on environmental enforcement tasks. In addition, 0.3 FTE was spent on administrative support of the enforcement tasks. In 2019, a total of 109 environmental enforcement inspections were carried out. 91 inspections were carried out following complaints made directly to the inter-municipal partnership, 6 inspections were carried out at the request of another public sector body, 11 inspections were carried out on their own initiative, and assistance was provided for 1 inspection. No infringements were found in 80 inspection cases. In 2019, 10 recommendations were made. An infringement was found during 29 inspections, mainly related to waste. Of these infringements, 11 warnings were issued and 11 priority official reports were drawn up. In 2019, 2 administrative measures and 2 safety measures were imposed.

The eighth responding inter-municipal association provides environmental enforcement support to 7 affiliated municipalities. In 2019, one inter-municipal supervisor was appointed who spent 1 FTE on environmental enforcement tasks. A total of 112 environmental enforcement inspections were carried out in 2019.. 52 inspections were carried out following complaints made directly to the inter-municipal partnership body, 48 inspections were carried out on their own initiative, and assistance was provided for 12 inspections. No infringements were found in 39 inspection cases. 1 recommendation was made. An infringement was found in 73 inspection cases. In respect of the identified violations, 68 warnings were issued and 5 priority official reports were drawn up. In 2019, 1 administrative measure was imposed by this inter-municipal association.

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

Whereas the previous chapter discusses the individual enforcement bodies and their efforts under the Environmental Enforcement Decree, this chapter focuses on the range of environmental enforcement instruments.

The aim is to gain insight into the use of all the resources given to supervisors to achieve their objectives.

This report provides an overview of the total number of inspections in relation to the number of inspections where a violation was found. This makes it possible to draw conclusions about the degree of compliance and the targeted enforcement by the bodies. In addition, the enforcement instruments in this report are weighed against the number of enforcement inspections carried out where a violation was found. This consideration was chosen because most of the instruments being evaluated can be used to identify an infringement.

In line with Chapter 2 'Evaluation of the pursued environmental enforcement policy', the evaluation of the individual enforcement instruments, i.e. the recommendation, the warning, the incident report, the official report and the administrative measures, is based on the information obtained from the supervisors. The use of these figures implies that all previously formulated comments and remarks also apply here.

In the previous chapter, the supervisors of the Local police and the municipal supervisors were divided into different classes based on the number of inhabitants. In this chapter, the supervisors of the Local police on the one hand and the municipal supervisors on the other hand are included as a single body, alongside the various regional bodies.

### 3.1 INSPECTIONS WHERE AN INFRINGEMENT WAS FOUND

In order to carry out a correct evaluation of the environmental enforcement instruments, the correct parameters must be compared with each other. The following table shows the total number of inspections carried out in 2019 is divided into the number of 'inspections where no violation was found' and the number of 'inspections where a violation was found'. The definition of an inspection is the following: "An environmental enforcement inspection is the process of examining whether a legal person and/or a natural person who is bound by legal obligations under environmental law, actually complies with those legal obligations". In principle, to avoid double counting, one inspection is linked to one violation or one non-violation. One inspection for one infringement also includes all the inspections relating to those identified infringements.

Since an instrument can only be used to establish an environmental offence or an environmental infringement, the number of times it has been applied will be weighed against the number of 'inspections where an infringement was found'. The exception to this is the 'recommendation' instrument. In principle, the recommendation can only be applied if an environmental offence or environmental infringement threatens to occur, but no violation has yet been found.

The following table gives an overview of the total number of environmental enforcement inspections carried out per supervisory authority, the number of inspections where no infringement was found and the number of inspections where an infringement was found in 2019.



| Enforcement actor   | Total number of inspections | Number of inspections where no infringement was found | % share in 2019 | Number of inspections where an infringement was found | % share in 2019 |
|---|-----------------------------|---|-----------------|---|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 166                         | 166   | 100%            | 0   | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 11,219                      | 10,644  | 95%             | 575   | 5%              |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 149                         | 54  | 36%             | 95  | 64%             |
| Agency for Nature and Forests (ANB)   | 8,638                       | 7,117   | 82%             | 1,521   | 18%             |
| Flemish Waterways plc;  | 366                         | 356   | 97%             | 10  | 3%              |
| Agency for Roads and Traffic (AWV)  | 297                         | 93  | 31%             | 204   | 69%             |
| Flemish Agency for Care and Health (VAZG)   | 5,851                       | 5,005   | 86%             | 846   | 14%             |
| Public Waste Agency of Flanders (OVAM)  | 2,749                       | 1,524   | 55%             | 1,225   | 45%             |
| Flemish Land Agency (VLM)   | 5,942                       | 5,344   | 90%             | 598   | 10%             |
| Flemish Environment Agency (VMM)  | 506                         | 434   | 86%             | 72  | 14%             |
| Department of Mobility and Public Works (MOW)   | 0                           | 0   | 0%              | 0   | 0%              |
| Agency for Maritime and Coastal Services  | /                           | /   | /               | /   | /               |
| Provincial supervisors  | 103                         | 11  | 11%             | 92  | 89%             |
| Municipal supervisors   | 3,094                       | 1,469   | 47%             | 1,625   | 53%             |
| Supervisors of inter-municipal partnerships   | 447                         | 125   | 28%             | 322   | 72%             |
| Local Police supervisors  | 1,753                       | 1,182   | 67%             | 571   | 33%             |
| <b>Total</b>  | <b>41,280</b>               | <b>33 524</b>   | <b>81%</b>      | <b>7 756</b>  | <b>19%</b>      |

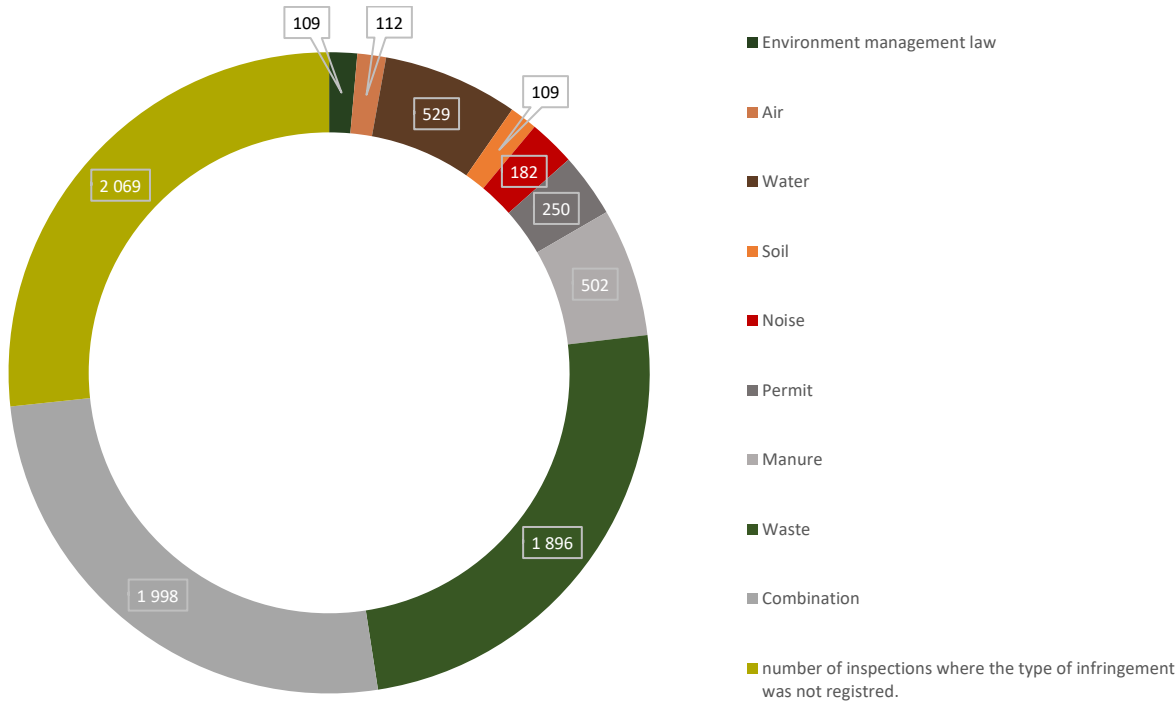
Table 24 Comparison of the number of 'inspections where no infringement was found' and the number of 'inspections where an infringement was found' in 2019.

A first observation that can be made based on the table above is that, in 2019, a total of 41,280 environmental enforcement inspections were carried out by responding regional supervisors, provincial supervisors, municipal supervisors, supervisors of inter-municipal partnerships and Local police supervisors. A large proportion of these inspections, i.e. 27%, were carried out by the supervisors of the Department of Environment and Spatial Development – Environmental Inspection. In addition 21% of the total number of enforcement inspections were carried out by the Agency for Nature and Forests.

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 41,280 environmental enforcement inspections carried out, 33,524 inspections did not reveal any infringement, which amounts to 81%, while 7,756 inspections, i.e. 19%, did reveal an infringement. This means that less than 1/5 of the environmental enforcement inspections resulted in the establishing of an infringement in 2019. This increased percentage of inspections in which no infringement was found could indicate an increased level of compliance or a lack of risk-based approach and targeted monitoring.

If we look at the different supervisors, 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. For other players, on the other hand, the number of inspections where an infringement has been detected is low. Whether or not the enforcement was the result of complaints and reports could potentially play a role in this respect.

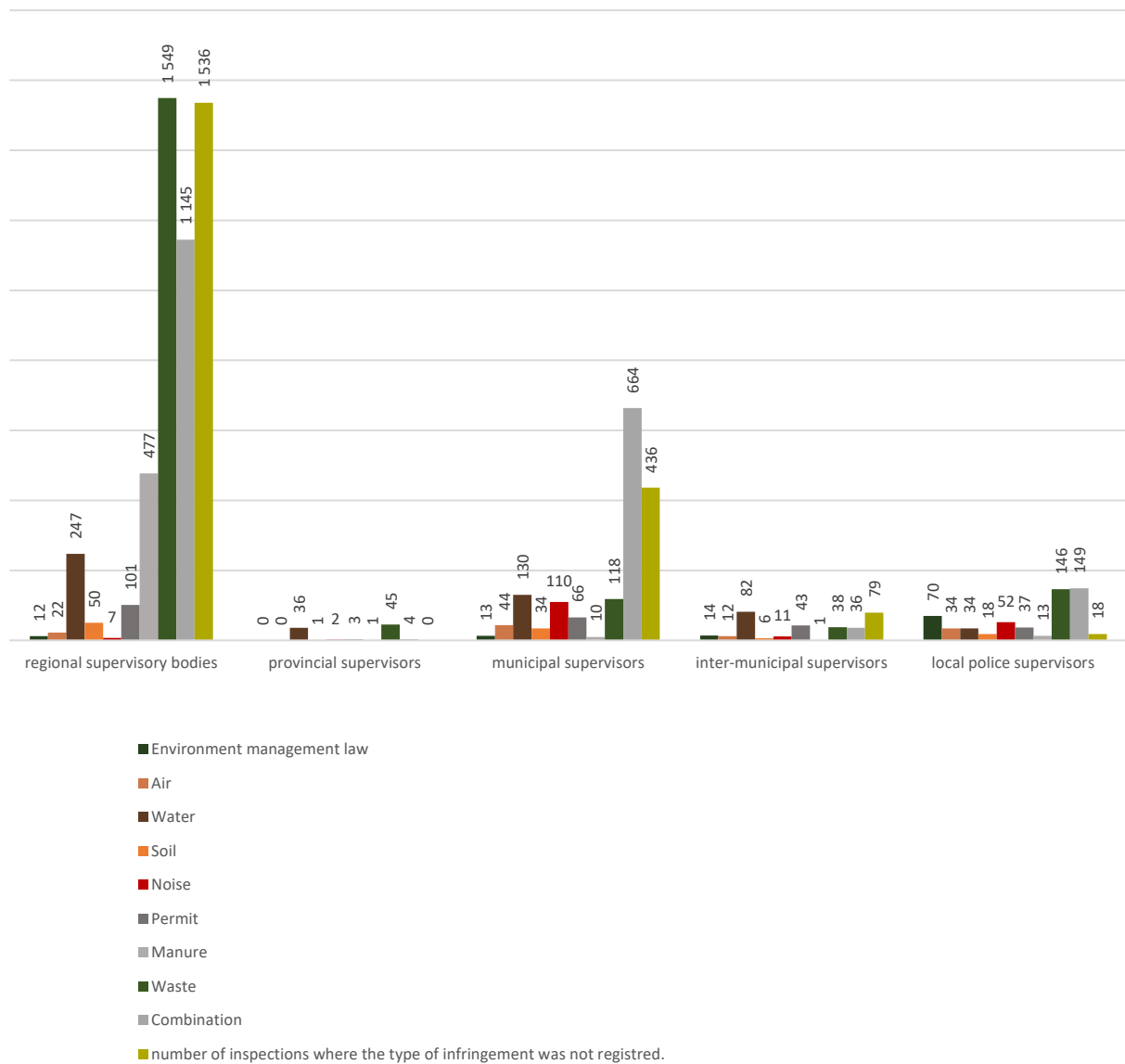
For 2019, the supervisory authorities were asked to indicate the subject of the identified breaches, namely environmental management, air, water, soil, noise, permits, manure waste, or a combination of these subjects. The graph below gives an overview of the number of inspections where an infringement was detected, broken down by category.



Graph 7 The number of inspections where an infringement was found, broken down by category

The graph shows the different categories in which the 7,756 identified infringements fall. The largest number of infringements were related to manure, with 26% and environmental management, with 24% of the number of identified infringements.

The following graph shows the various categories of infringements found in 2019, broken down by actor.



Graph 8 The number of inspections where an infringement was found, broken down by actor

The majority of infringements detected by regional supervisors related to waste, namely 1,549 offences out of a total of 5,146 identified by these supervisors. This equates to 30%. However, it is striking that the infringement type was not recorded for nearly 30% of the total number of inspections carried out by regional supervisory bodies. The infringements identified by provincial supervisors were mainly related to waste and water. The municipal supervisors mainly identified combined infringements; the supervisors of the inter-municipal associations mainly identified infringements related to water; and the Local police supervisors mainly identified waste offences and combined infringements.

### 3.2 INSPECTIONS WITHOUT FURTHER ACTION

The survey of supervisory authorities asked about the number of performed inspections where an infringement of environmental legislation – an environmental offence or environmental crime – was detected in 2019 while no action was taken. The following table shows the number of 'inspections without further action' in proportion to the number of 'inspections where an infringement was identified' by supervisors in 2019.

| Enforcement actor   | Number of inspections where an infringement was found | Number of inspections without further action | % share in 2019 |
|---|---|--|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0   | 0  | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 575   | 0  | 0%              |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 95  | 0  | 0%              |
| Agency for Nature and Forests (ANB)   | 1,521   | 0  | 0%              |
| Flemish Waterways plc;  | 10  | 10   | 100%            |
| Agency for Roads and Traffic (AWV)  | 204   | 0  | 0%              |
| Flemish Agency for Care and Health (VAZG)   | 846   | 22   | 3%              |
| Public Waste Agency of Flanders (OVAM)  | 1,225   | 0  | 0%              |
| Flemish Land Agency (VLM)   | 598   | 0  | 0%              |
| Flemish Environment Agency (VMM)  | 72  | 38   | 53%             |
| Department of Mobility and Public Works (MOW)   | 0   | 0  | 0%              |
| Agency for Maritime and Coastal Services  | /   | /  | /               |
| Provincial supervisors  | 92  | 7  | 8%              |
| Municipal supervisors   | 1,625   | 114  | 7%              |
| Supervisors of inter-municipal partnerships   | 322   | 1  | 0%              |
| Local Police supervisors  | 571   | 0  | 0%              |
| <b>Total</b>  | <b>7,756</b>  | <b>192</b>                                   | <b>2%</b>       |

Table 25 The number of inspections without further action weighed against the number of 'inspections where an infringement was identified in 2019.

The table above shows that in 2% of the total number of 7,756 performed environmental enforcement inspections in which an infringement was found, no further action was taken with regard to the identified infringement. However, one possible explanation for such inspections without further action could be that the violations identified are environmental infringements, and that the Environmental Enforcement Decree gives supervisors the freedom to decide whether or not to draw up an incident report.

### 3.3 INSPECTIONS WHOSE RESULT IS UNKNOWN

Based on the survey of supervisory authorities, an assessment was made of the number of inspections whose result was unknown in 2019. This was achieved by calculating the difference between, on the one hand, the total number of performed inspections, and on the other hand, the number of inspections where no infringement was found, the number of inspections where no action was taken in respect of the identified infringement, the number of recommendations, the number of warnings, the number of incident reports and the number of official reports. This is therefore always a minimum number, as several instruments can be used during a single inspection. The table below shows the number of 'inspections whose result is unknown' in proportion to the total number of environmental enforcement inspections carried out by the supervisor.

| Enforcement actor   | Total number of inspections | Number of inspections whose result is unknown | % share in 2019 |
|---|-----------------------------|---|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 166                         | 0   | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 11,219                      | 0   | 0%              |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 149                         | 61  | 41%             |
| Agency for Nature and Forests (ANB)   | 8,638                       | 0   | 0%              |
| Flemish Waterways plc;  | 366                         | 0   | 0%              |
| Agency for Roads and Traffic (AWV)  | 297                         | 0   | 0%              |
| Flemish Agency for Care and Health (VAZG)   | 5,851                       | 0   | 0%              |
| Public Waste Agency of Flanders (OVAM)  | 2,749                       | 0   | 0%              |
| Flemish Land Agency (VLM)   | 5,942                       | 45  | 1%              |
| Flemish Environment Agency (VMM)  | 506                         | 0   | 0%              |
| Department of Mobility and Public Works (MOW)   | 0                           | 0   | 0%              |
| Agency for Maritime and Coastal Services  | /                           | /   | /               |
| Provincial supervisors  | 103                         | 0   | 0%              |
| Municipal supervisors   | 3,094                       | 83  | 3%              |
| Supervisors of inter-municipal partnerships   | 447                         | 28  | 6%              |
| Local Police supervisors  | 1,753                       | 6   | 0%              |
| <b>Total</b>  | <b>41,280</b>               | <b>223</b>                                    | <b>1%</b>       |

*Table 26 The number of inspections whose result is unknown in 2019 and their percentage of the total number of environmental enforcement inspections carried out in 2019*

The table above shows that for a number of supervisors the results of some of their inspections are unknown, namely at the Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Division (formerly AMV), the Flemish Land Agency and for the provincial and municipal supervisors.

For 223 out of a total of 41,280 performed environmental enforcement inspections, the result in 2019 was unknown. This corresponds to less than 1% of the total number of inspections. This low percentage may be an indication of effective monitoring by the supervisory bodies. Effective monitoring is crucial for drawing up an environmental enforcement report efficiently. Complete and accurate data should be used as much as possible. Every inspection whose outcome is unknown results in an incomplete evaluation of the bodies involved and the entire set of instruments.

### 3.4 EVALUATION OF THE 'RECOMMENDATION' INSTRUMENT

Article 16.3.22 of DABM defines the 'recommendation' instrument as follows: "If supervisors find that an environmental offence or an environmental crime is likely to occur, they may give any recommendation they consider useful to prevent it.

Since 'recommendation' is one of the preventive instruments and can therefore only be used in the event that no crime or offence has been detected, the number of recommendations has been weighed against the number of inspections where no infringement was found. However, when interpreting the information below, take into account that an infringement may be identified during an inspection and that, in addition to, for example, a warning, an incident report or an official report, a recommendation may also be formulated during the same inspection for an infringement in the future. Recommendations may also be given orally and are therefore not registered. A percentage underestimation of the number of formulated recommendations in relation to the number of inspections where no infringement was found can therefore not be ruled out.

The following table gives an overview of the use of the 'recommendation' instrument by the various supervisory bodies in 2019.

| Enforcement actor   | Number of inspections where no infringement was found | Number of recommendations by | % share in 2019 |
|---|---|------------------------------|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 166   | 0                            | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 10,644  | 158                          | 1%              |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 54  | 0                            | 0%              |
| Agency for Nature and Forests (ANB)   | 7,117   | 14                           | 0%              |
| Flemish Waterways plc;  | 356   | 0                            | 0%              |
| Agency for Roads and Traffic (AWV)  | 93  | 113                          | 122%            |
| Flemish Agency for Care and Health (VAZG)   | 5,005   | 3,006                        | 60%             |
| Public Waste Agency of Flanders (OVAM)  | 1,524   | 110                          | 7%              |
| Flemish Land Agency (VLM)   | 5,344   | 20                           | 0%              |
| Flemish Environment Agency (VMM)  | 434   | 0                            | 0%              |
| Department of Mobility and Public Works (MOW)   | 0   | 0                            | 0%              |
| Agency for Maritime and Coastal Services  | /   | /                            | /               |
| Provincial supervisors  | 11  | 0                            | 0%              |
| Municipal supervisors   | 1,469   | 1,439                        | 98%             |
| Supervisors of inter-municipal partnerships   | 125   | 106                          | 85%             |
| Local Police supervisors  | 1,182   | 968                          | 82%             |
| <b>Total</b>  | <b>33,524</b>   | <b>5,934</b>                 | <b>18%</b>      |

Table 27 The number of 'recommendations' issued by supervisors in relation to the total number of 'inspections where no infringement was found'

The table shows that a total of 5,934 recommendations were drawn up for a total of 33,524 inspections for which no infringement was found. This corresponds to 18% of these inspections.

Note that the recommendation instrument is not used equally by every supervisory authority. A large portion of the percentage share is due to the number of recommendations (absolute number and percentage in relation to the number of inspections for which no infringement was found) issued by VAZG supervisors. In 2019, VAZG formulated 3,006 recommendations for 5,005 inspections where no infringement was found, which means that in 6 out of 10 inspections for which no infringement was found, the VAZG supervisors took preventive action by formulating recommendations to prevent an imminent environmental offence or an environmental crime. In 2019, the AWV issued an average of 1.2 recommendations for every inspection without infringements. A very high percentage of recommendations for inspections without infringements was also found for inspections by the Local police supervisors, the inter-municipal associations and municipal supervisors. This means that the data for 2019 also show a distinction between the regional supervisory authorities on the one hand and the municipal supervisors and the Local police supervisors and inter-municipal partnerships on the other. The regional supervisory authorities - with the exception of VAZG and the AWV - used the instrument of recommendation significantly less than the municipal supervisors and the supervisors of the Local police and inter-municipal partnerships. One possible explanation could be that oral recommendations are not always monitored.

### 3.5 EVALUATION OF THE 'WARNING' INSTRUMENT

DABM also provides a clear description of the 'warning' instrument. Article 16.3.27 of DABM specifies: "If supervisors, in the course of their supervisory duties, identify an environmental offence or an environmental crime, they may require that the suspected offender and any other involved persons take the necessary measures to end the environmental offence or crime, to remedy its consequences in whole or in part, or to prevent its recurrence." The supervisor may therefore choose whether or not to use the warning instrument.

The table below shows the figures for the use of the 'warning' instrument in relation to the total number of inspections where an infringement was detected in 2019, as obtained from the various supervisory authorities.

| Enforcement actor   | Number of inspections where an infringement was found | Number of warnings by supervisors | % share in 2019 |
|---|---|-----------------------------------|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0   | 0                                 | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 575   | 459                               | 80%             |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 95  | 24                                | 25%             |
| Agency for Nature and Forests (ANB)   | 1,521   | 850                               | 56%             |
| Flemish Waterways plc;  | 10  | 0                                 | 0%              |
| Agency for Roads and Traffic (AWV)  | 204   | N/A                               | /               |
| Flemish Agency for Care and Health (VAZG)   | 846   | 824                               | 97%             |
| Public Waste Agency of Flanders (OVAM)  | 1,225   | 2305                              | 188%            |
| Flemish Land Agency (VLM)   | 598   | 313                               | 52%             |
| Flemish Environment Agency (VMM)  | 72  | 34                                | 47%             |
| Department of Mobility and Public Works (MOW)   | 0   | 0                                 | 0%              |
| Agency for Maritime and Coastal Services  | /   | /                                 | /               |
| Provincial supervisors  | 92  | 93                                | 101%            |
| Municipal supervisors   | 1,625   | 1 199                             | 74%             |
| Supervisors of inter-municipal partnerships   | 322   | 173                               | 54%             |
| Local Police supervisors  | 571   | 375                               | 66%             |
| <b>Total</b>  | <b>7,756</b>  | <b>6,649</b>                      | <b>86%</b>      |

*Table 28 The number of 'warnings' issued by supervisors in relation to the total number of 'inspections where an infringement was found*

The table above shows that warnings were a widely used instrument in 2019. A warning was issued in nearly 86% of all inspections where a violation was found.

Furthermore, the above data show that almost every actor who carried out inspections in which an infringement was detected, with the exception of the Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects & Flemish Environmental Planning agency, the Flemish Waterways plc and Mobility and Public Works Policy Area division, used the



warning instrument, and that this was the case for at least  $\frac{1}{4}$  of the number of inspections for which an infringement was found.

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

The 'incident report' is an enforcement instrument that was created when the Environmental Enforcement Decree came into force on 1 May 2009. One of the important amendments to the Environmental Enforcement Decree was the decriminalisation of certain violations of environmental legislation; these violations have a limited impact on the environment and must meet a number of cumulative criteria. This resulted in a list, which is included in the various appendices to the Order of 12 December 2008, of behaviours that qualify as an environmental offence. Such conduct is therefore no longer punishable.

The incident report is the tool for reporting environmental offences, so that they can subsequently only be sanctioned administratively. The supervisor may draw up such an incident report, but is not obliged to do so. The supervisor has a discretionary power in this respect and can therefore decide whether or not to use it.

The following table shows the number of incident reports drawn up by the individual supervisory authorities compared to the number of inspections where an infringement was found in 2019.

Note that the 'incident report' is an instrument used by the supervisor to establish an environmental offence. The figure against which the instrument is compared concerns the number of inspections where an infringement was detected – environmental offences as well as environmental infringements. For this reason, the data below do not reflect the number of times an environmental offence was established and the number of times an incident report was prepared.

| Enforcement actor   | Number of inspections where an infringement was found | Number of incident reports by supervisors | % share in 2019 |
|---|---|---|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0   | 0   | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 575   | 2   | 0%              |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 95  | 0   | 0%              |
| Agency for Nature and Forests (ANB)   | 1,521   | 212                                       | 14%             |
| Flemish Waterways plc;  | 10  | 0   | 0%              |
| Agency for Roads and Traffic (AWV)  | 204   | 0   | 0%              |
| Flemish Agency for Care and Health (VAZG)   | 846   | 0   | 0%              |
| Public Waste Agency of Flanders (OVAM)  | 1,225   | 75  | 6%              |
| Flemish Land Agency (VLM)   | 598   | 1   | 0%              |
| Flemish Environment Agency (VMM)  | 72  | 0   | 0%              |
| Department of Mobility and Public Works (MOW)   | 0   | 0   | 0%              |
| Agency for Maritime and Coastal Services  | /   | /   | /               |
| Provincial supervisors  | 92  | 0   | 0%              |
| Municipal supervisors   | 1,625   | 8   | 0%              |
| Supervisors of inter-municipal partnerships   | 322   | 0   | 0%              |
| Local Police supervisors  | 571   | 5   | 1%              |
| <b>Total</b>  | <b>7,756</b>  | <b>303</b>                                | <b>4%</b>       |

Table 29 The number of incident reports issued by supervisors in relation to the number of inspections where an infringement was found

Compared with the other instruments, it can be observed for 2019 in general that proportionally the incident report instrument is not used often. Only 303 incident reports were drawn up in 2019. Most of these 303 incident reports, i.e. 70%, were drawn up by the Agency for Nature and Forests. Many other supervisory bodies did not draw up any incident reports in 2019.

In anticipation of the figures in the next chapter, a discrepancy can be observed for 2019 in the number of incident reports drawn up and communicated by the supervisory authorities and the number of incident reports that were also effectively transferred to the regional entity of the Enforcement Division of the Department of Environment and Spatial Development (formerly LNE-AMMC). The municipal supervisors compiled a total of 8 incident reports in 2019, while the regional entity reported that it had received only 1 incident report from a municipal supervisor. A slight discrepancy is also observed among regional supervisors in 2019. 290 incident reports were drawn up in 2019. The regional entity reported having received 271 incident reports from these supervisory authorities.

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

Where an environmental infringement can be identified by means of an incident report, supervisors may<sup>28</sup> use an official report to report environmental crimes to the public prosecutor's office. The table below gives an overview of the initial official reports drawn up by each supervisor in 2019, in relation to the number of inspections where an infringement was found.

The limitations of the available figures also apply here just like in the discussion of the 'incident report' instrument. The proportion of the number of official reports drawn up in relation to the number of inspections for which an infringement was found does not provide an entirely accurate picture of how effective environmental crimes are established. After all, the number of inspections where an infringement has been established may cover environmental crimes and environmental offences.

In March 2013, the 'Priority memorandum on the prosecution policy for environmental law in the Flemish Region' protocol was signed by the Minister of the Environment and the Minister of Justice. This protocol sets out the priorities in the context of supervision and criminal/administrative prosecution so that the two can be aligned. This protocol also discussed the fact that official reports drawn up for environmental offences included in the priority note are referred to as 'priority official reports'. For the survey on which this Environmental Enforcement Report 2019 is based, the VHRM therefore asked for a distinction to be made between the number of priority and non-priority official reports. The following table shows this.

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<sup>28</sup> Since 2018, supervisors are no longer obliged to establish an environmental crime in an official report.

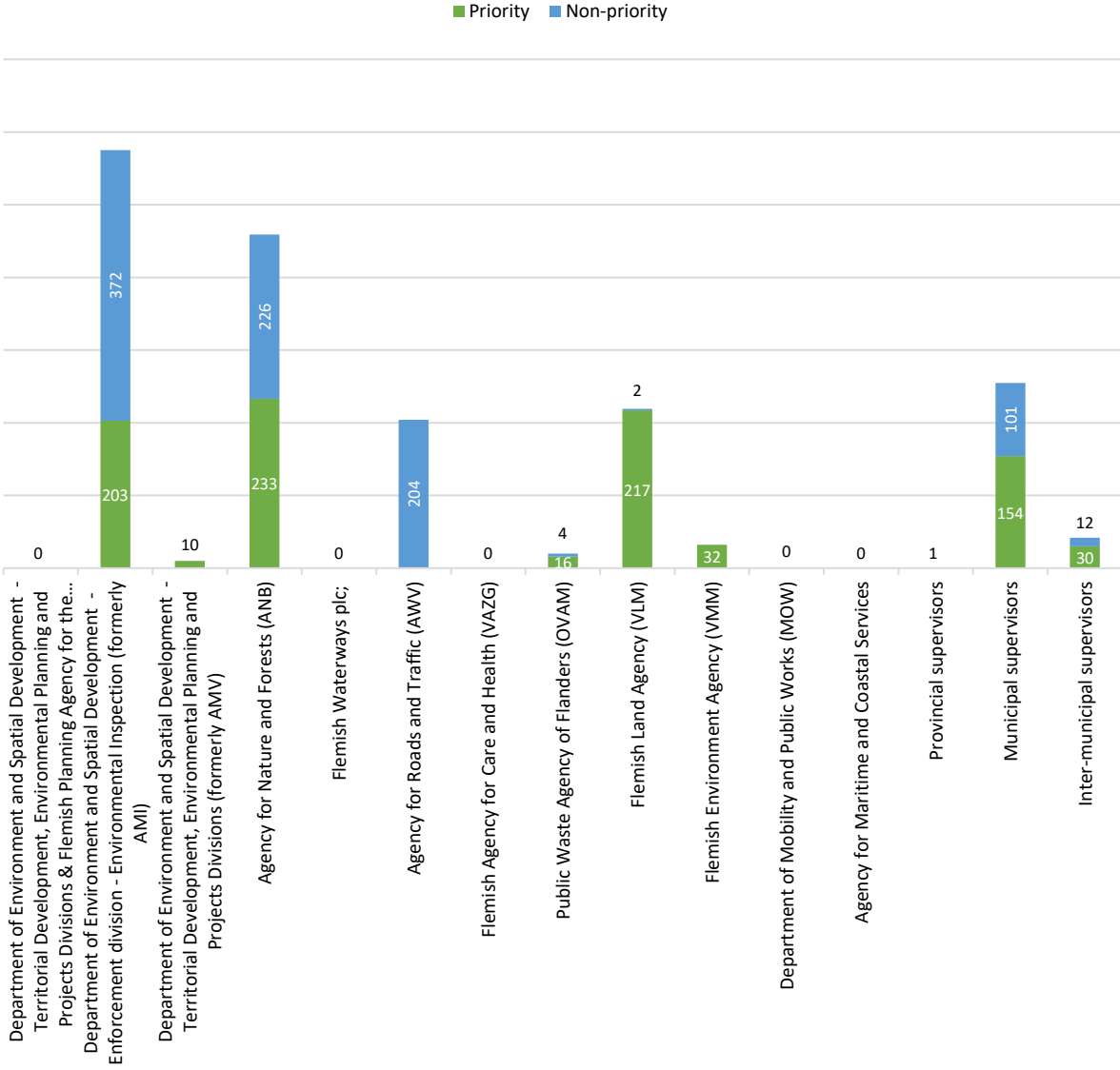
| Enforcement actor   | Number of inspections where an infringement was found | Priority | % share of priority ORs | Non-Priority | % share of non-priority ORs |
|---|---|----------|-------------------------|--------------|-----------------------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0   | 0        | 0%                      | 0            | 0%                          |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 575   | 203      | 35%                     | 372          | 65%                         |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 95  | 10       | 11%                     | 0            | 0%                          |
| Agency for Nature and Forests (ANB)   | 1,521   | 233      | 15%                     | 226          | 15%                         |
| Flemish Waterways plc;  | 10  | 0        | 0%                      | 0            | 0%                          |
| Agency for Roads and Traffic (AWV)  | 204   | 0        | 0%                      | 204          | 100%                        |
| Flemish Agency for Care and Health (VAZG)   | 846   | 0        | 0%                      | 0            | 0%                          |
| Public Waste Agency of Flanders (OVAM)  | 1,225   | 16       | 1%                      | 4            | 0%                          |
| Flemish Land Agency (VLM)   | 598   | 217      | 36%                     | 2            | 0%                          |
| Flemish Environment Agency (VMM)  | 72  | 32       | 44%                     | 0            | 0%                          |
| Department of Mobility and Public Works (MOW)   | 0   | 0        | 0%                      | 0            | 0%                          |
| Agency for Maritime and Coastal Services  | /   | /        | /                       | /            | /                           |
| Provincial supervisors  | 92  | 1        | 1%                      | 0            | 0%                          |
| Municipal supervisors   | 1,625   | 154      | 9%                      | 101          | 6%                          |
| Supervisors of inter-municipal partnerships   | 322   | 30       | 9%                      | 12           | 4%                          |
| Local Police supervisors  | 571   | 178      | 31%                     | 262          | 46%                         |
| Total   | 7,756   | 1 074    | 14%                     | 1,183        | 15%                         |

Table 30 The number of 'official reports' issued by supervisors in relation to the number of inspections where an infringement was found

An official report was drawn up in 2019 for 2,257 of a total of 7,756 inspections where an infringement was established. This represents a percentage ratio of 29%. As in the previous reports, this points to the existing pragmatic approach of article 29 of the Criminal Procedure Code, which stipulates that an official report must be drawn up when an offence 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 supervisory authorities 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 Environmental Enforcement Decree was therefore

amended in this respect in 2018 so that supervisors are no longer obliged to draw up an official report when a crime is established and this instrument has become optional.

The graph below shows the ratio between the number of priority and non-priority official reports drawn up in 2019.



Graph 9 The ratio between priority and non-priority official reports in 2019

The graph above shows the ratio between the number of priority and non-priority official reports drawn up in 2019 per supervisor. In general, this ratio was 48% for priority official reports compared to 52% for non-priority official reports.

Different kinds of supervisory authorities can however be distinguished: Certain actors, such as the Flemish Land Agency, (almost) only draw up priority official reports. On the other hand, other bodies such as the AWV mainly issue non-priority official reports, or draw up both priority and non-priority official reports.

## 3.8 EVALUATION OF THE 'ADMINISTRATIVE MEASURES' INSTRUMENT AND 'APPEALS AGAINST DECISIONS IMPOSING ADMINISTRATIVE MEASURES'

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

Articles 16.4.2 to 16.4.18quater of DABM regulate the imposition, lifting, execution, appeal and requests to impose administrative measures, as well as the possibility of imposing an administrative penalty payment in the event that administrative measures are not implemented on time or not at all. The appeal against decisions imposing administrative measures is discussed in more detail in chapter 3.8.2.

According to article 16.4.7 of DABM, administrative measures may take the form of:

- ▶ an order to take measures to end the environmental offence or crime, to remedy its effects in whole or in part, or to prevent its recurrence (regularisation order);
- ▶ an order to cease activities, works or the use of certain objects (injunction);
- ▶ an actual action by the persons referred to in article 16.4.6, at the expense of the person against whom the administrative measures were imposed, to end the environmental offence or the environmental crime, to remedy the consequences of the environmental offence or the environmental crime in whole or in part, or to prevent its recurrence (administrative coercive measure);
- ▶ a combination of these measures..

The supervisor, the mayor and the provincial governor may therefore choose whether or not to use the administrative measure instrument in a specific situation. The regularisation order has the same purpose as the warning; supervisors may choose the most appropriate instrument. When choosing the instrument, the principle of proportionality must be respected in accordance with art. 16.4.4 of DABM.

The following table gives an overview of the total number of imposed administrative measures in relation to the number of inspections where an infringement was identified by supervisory authority in 2019.

| Regional enforcement body   | Number of inspections where an infringement was found | Number of administrative measures imposed by supervisors | % share in 2019 |
|---|---|--|-----------------|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0   | 0  | 0%              |
| Department of Environment and Spatial Development - Enforcement division - Environmental Inspection (formerly AMI)  | 575   | 24   | 4%              |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 95  | 0  | 0%              |
| Agency for Nature and Forests (ANB)   | 1,521   | 267  | 18%             |
| Flemish Waterways plc;  | 10  | 0  | 0%              |
| Agency for Roads and Traffic (AWV)  | 204   | 0  | 0%              |
| Flemish Agency for Care and Health (VAZG)   | 846   | 0  | 0%              |
| Public Waste Agency of Flanders (OVAM)  | 1,225   | 1  | 0%              |
| Flemish Land Agency (VLM)   | 598   | 9  | 2%              |
| Flemish Environment Agency (VMM)  | 72  | 0  | 0%              |
| Department of Mobility and Public Works (MOW)   | 0   | 0  | 0%              |
| Agency for Maritime and Coastal Services  | /   | /  | /               |
| Provincial supervisors  | 92  | 0  | 0%              |
| Municipal supervisors   | 1,625   | 70   | 4%              |
| Supervisors of inter-municipal partnerships   | 322   | 8  | 2%              |
| Local Police supervisors  | 571   | 237  | 42%             |
| <b>Total</b>  | <b>7,756</b>  | <b>616</b>   | <b>8%</b>       |

Table 31 The number of imposed administrative measures in relation to the number of inspections where an infringement was identified in 2019

In 2019, a total of 616 administrative measures were imposed by the supervisory authorities. This is 8% of the total number of inspections where an infringement was identified.

The table above shows that not all supervisors make use of the administrative measures instrument. The majority of imposed administrative measures were imposed by ANB (Agency for Nature and Forests), i.e. 43%, followed by Local police supervisors, who imposed 38% of the total number of administrative measures imposed in 2019. These Local police supervisors imposed an administrative measure for nearly half of all inspections where an infringement was detected in 2019.

The following table gives an overview of the share of the various types of administrative measures per supervisor in 2019. In addition, the survey for this environmental enforcement report also included a question about the number of administrative measures imposed in response to a request. Article 16.4.18. of title XVI of DABM states that persons who meet one of the following definitions may apply for an administrative measure:

- ▶ natural and legal persons who suffer directly as a result of the environmental offence or the environmental crime;
- ▶ natural and legal persons with an interest in curbing the environmental offence or the environmental crime;



- ▶ legal persons within the meaning of the Act of 12 January 1993 on a right of action for the protection of the environment.

any request to impose an administrative measure must be addressed to persons authorised to implement it. Article 16.4.6 of DABM stipulates that supervisors, for environmental legislation to which their supervisory duties relate; the governor of a province or his deputy, for environmental offences or environmental crimes designated by the Government of Flanders; and the mayor or his deputy, for environmental offences or environmental crimes designated by the Government of Flanders, are all authorised to respond to requests by imposing an administrative measure. The table below therefore shows, in addition to the type of administrative measure, the number of administrative measures imposed in response to a request.

To gain insight into the proportion of administrative measures that were not implemented within the imposed period, the various bodies were also asked to provide this number for this environmental enforcement report. These figures are also shown in the following table together with the different kinds of imposed administrative measures.

Regional supervisors can impose an administrative penalty payment together with administrative measures in the event that the administrative measures are not implemented or are not implemented in time. The supervisory bodies 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.

| Regional enforcement body   | Administrative measures |           |                      |            |                                 |            |  |           |                                  |           |  |            |   |   |
|---|-------------------------|-----------|----------------------|------------|---------------------------------|------------|--|-----------|----------------------------------|-----------|--|------------|---|---|
|   | Injunction              |           | Regularisation order |            | Administrative coercive measure |            | Combination of specified administrative measures |           | Imposed in response to a request |           | it was not possible to have the AM carried out within the imposed time frame |            | In how many cases were the imposed administrative measures linked to an administrative penalty payment? | In how many cases has this administrative penalty payment been collected? |
|   | #                       | %         | #                    | %          | #                               | %          | #  | %         | #                                | %         | #  | %          | #   | #   |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Department of Environment and Spatial Development - Enforcement - Environmental Inspection (formerly AMI)   | 8                       | 33%       | 10                   | 42%        | 1                               | 4%         | 5  | 21%       | 3                                | 13%       | 6  | 25%        | 9   | 4   |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Agency for Nature and Forests (ANB)   | 3                       | 1%        | 150                  | 56%        | 109                             | 41%        | 5  | 2%        | 0                                | 0%        | 12   | 4%         | 12  | 0   |
| Flemish Waterways plc;  | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Agency for Roads and Traffic (AWV)  | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Flemish Agency for Care and Health (VAZG)   | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Public Waste Agency of Flanders (OVAM)  | 0                       | 0%        | 1                    | 100%       | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 1  | 100%       | 1   | 2   |
| Flemish Land Agency (VLM)   | 2                       | 22%       | 2                    | 22%        | 0                               | 0%         | 5  | 56%       | 0                                | 0%        | 6  | 67%        | 1   | 0   |
| Flemish Environment Agency (VMM)  | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Department of Mobility and Public Works (MOW)   | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Agency for Maritime and Coastal Services  | /                       | /         | /                    | /          | /                               | /          | /  | /         | /                                | /         | /  | /          | /   | /   |
| Provincial supervisors  | 0                       | 0%        | 0                    | 0%         | 0                               | 0%         | 0  | 0%        | 0                                | 0%        | 0  | 0%         | 0   | 0   |
| Municipal supervisors   | 9                       | 13%       | 35                   | 50%        | 3                               | 4%         | 23   | 33%       | 1                                | 1%        | 9  | 13%        | 2   | /   |
| Supervisors of inter-municipal partnerships   | 1                       | 0%        | 5                    | 0%         | 0                               | 0%         | 2  | 0%        | 0                                | 0%        | 3  | 0%         | /   | /   |
| Local Police supervisors  | 15                      | 6%        | 217                  | 92%        | 2                               | 1%         | 3  | 1%        | 0                                | 0%        | 129  | 54%        | /   | /   |
| <b>Total</b>  | <b>38</b>               | <b>6%</b> | <b>420</b>           | <b>68%</b> | <b>115</b>                      | <b>19%</b> | <b>43</b>  | <b>7%</b> | <b>4</b>                         | <b>1%</b> | <b>166</b>   | <b>27%</b> | <b>25</b>   | <b>6</b>  |

Table 32 Type of imposed administrative measures

The table above shows that the majority of all 616 imposed administrative measures were regularisation orders in 2019, namely 68% of the total number of imposed administrative measures.

In 2019, the administrative measure took the form of an administrative coercive measure 115 times, which is 17% of the total number of administrative measures. A total of 38 injunctions were issued in 2019, representing 6% of the total number of imposed administrative measures.

Only 1% of all administrative measures imposed in 2019 were imposed in response to a request.

The data in the table show that it was not possible to have 166 of the 616 imposed administrative measures implemented within the required period. This represents at least 27%. It was mainly the administrative measures imposed by the Local police supervisors that could not be implemented within the imposed deadline. This was the case for even more than half of the imposed administrative measures in 2019. A necessary condition for the effectiveness of an administrative measure is that it must also be implemented within an imposed period. Postponing this measure may lead to more damage and increased risks. The 'administrative penalty payment' instrument can offer a solution to exert additional pressure for those administrative measures that are not implemented on time. In 2019, 25 cases of an administrative penalty payment were linked to an administrative measure. The administrative penalty payment was actually collected in six of these cases.

### 3.8.2 Appeals against 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 and Spatial Development, Enforcement Division within fourteen days of the notification of the decision regarding the administrative measures or the administrative penalty payment.

In 2019, 64 appeals were lodged against decisions regarding administrative measures. Nine of those appeals were an appeal lodged against a decision on administrative measures to which a penalty payment was linked. Of these 64 appeals submitted in 2019, 23 related to environmental hygiene and 41 to environmental management. 19% of appeals were appeals against injunctions, 55% against regularisation orders and 12.5% against administrative coercive measures.

The regional entity of the Enforcement division of the Department of Environment and Spatial Development (formerly LNE-AMMC) is responsible for preparing the appeal case; in other words, the Enforcement division examines its admissibility, organises a hearing if necessary and formulates a recommendation for the minister. The figures obtained via the Enforcement division survey report that that 6 appeals were ruled inadmissible and 58 admissible.

Upon receipt of the appeal, the minister must decide on the admissible appeals within 90 days. Provided that the appellant and the person who imposed the administrative measure are notified of this, the minister may extend this period once by 90 days.

Since the administrative measure may expire if the decision is taken too late, it is important that the minister decides within the time limit provided in the decree.

|   | 2019 |
|---|------|
| Total number of admissible appeals  | 58   |
| Decision of the minister within the time limit laid down by decree  | 42   |
| Number of times the minister requested an extension of the deadline   | 13   |
| Number of cases in which the minister has not yet made a decision because the term was still running at the time of reporting | 14   |
| Number of appeals fully upheld  | 2    |
| Number of appeals partially upheld  | 11   |
| Number of appeals declared unfounded  | 26   |
| Number of appeals void of purpose   | 3    |

*Table 33 A comparison of the minister's decisions for admissible appeals in relation to decisions involving administrative measures in 2019*

The table above shows that, in 2019, a decision was taken on 42 admissible appeals within the time limit set by the decree. For 14 appeals, the period within which the minister had to take a decision had not yet expired at the time of the report.

The majority of the minister's decisions in 2019, i.e. 62%, concerned a dismissal of the appeal as unfounded, while 26% were partially upheld and only 5% fully upheld. In addition, 7% of the minister's decisions were declared devoid of purpose<sup>29</sup>.

The following table shows the number of appeals against decisions involving administrative measures in relation to the total number of imposed administrative measures.

| Type of imposed administrative measure                    | 2019 |
|---|------|
| Injunction  | 32%  |
| Regularisation order                                      | 8%   |
| Administrative coercive measure                           | 7%   |
| Combination of the aforementioned administrative measures | 21%  |

*Table 34 The percentage share of the number of appeals against decisions involving administrative measures in relation to the total number of imposed administrative measures per type for 2019.*

The table shows that the appeals lodged in 2019 were mainly related to injunctions. For example, 12 appeals were lodged against the 38 imposed injunctions issued in 2019.

#### **Number of appeals lodged against dismissed requests to impose administrative measures and decisions relating thereto**

Article 16.4.18 §4 of DABM stipulates that an appeal may be lodged with the minister against a refusal to impose an administrative measure. The minister shall decide on the appeal within sixty days of its receipt. The regional entity of the Enforcement division of the Department of Environment and Spatial Development (formerly LNE-AMMC) advises the minister on these appeals.

The following table gives an overview of the number of appeals lodged against dismissed requests to impose administrative measures in 2019.

<sup>29</sup>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.

|   | 2019 |
|---|------|
| Total number of appeals lodged against dismissed requests to impose administrative measures   | 4    |
| Number of appeals declared admissible   | 3    |
| Number of appeals fully upheld  | 0    |
| Number of appeals partially upheld  | 0    |
| Number of appeals declared unfounded  | 3    |
| Number of appeals void of purpose   | 0    |
| Appeals for which a decision was taken within the period of 60 days as laid down by decree  | 2    |
| Appeals in respect of which no decision has yet been given because the time limit is still running (even if this is a non-mandatory time limit) | 0    |
| Number of appeals related to environmental hygiene  | 4    |
| Number of appeals related to environmental management   | 0    |

*Table 35 The number of appeals lodged against refused requests to impose administrative measures in 2019*

The table above shows that, in 2019, 4 appeals were lodged against dismissed requests for the imposition of administrative measures. Three of these four appeals lodged in 2019, all of which were related to environmental hygiene, were declared admissible but unfounded.

For 2 of the 3 admissible appeals, the decision was taken within the 60-day period laid down by the decree.

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

Chapter VII of title XVI of DABM discusses, inter alia, the procedure for taking safety measures with regard to persons responsible for significant risks, as well as for lifting safety measures. For a better understanding of the figures below and the accompanying evaluation, articles 16.7.1 and 16.7.2 of the Environmental Enforcement Decree are reproduced below.

Article 16.7.1 defines the 'Safety Measures' instrument as: "Safety measures are measures whereby persons as specified in §1 can take or impose all actions that they deem necessary in the given circumstances to eliminate, reduce to an acceptable level or stabilise a significant risk to man or the environment." The following article, article 16.7.2, provides that safety measures may include, inter alia:

- ▶ the suspension or execution of works, operations or activities immediately or within a specified period;
- ▶ the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon;
- ▶ the total or partial closure of an establishment;
- ▶ the confiscation, storage or removal of relevant items, including waste materials and animals;
- ▶ the prohibition or evacuation of certain areas, grounds, buildings or roads.

Taking a safety measure is therefore an administrative act for which supervisors, mayors and provincial governors have a discretionary power.

Unlike supervision and the enforcement instruments discussed in this chapter, the use of safety measures is not part of the enforcement process. Safety measures may be imposed where there is a significant risk to man or the environment. This means that safety measures are a completely separate category within the Environmental Enforcement Decree, so they do not constitute an administrative measure nor an administrative fine or a criminal sanction. Although they are restrictive measures, they do not presuppose any fault on the part of the person to whom they are addressed, nor are they intended to punish. A safety measure focuses on the public interest and in particular on safeguarding public health, order, peace and safety<sup>30</sup>. Since safety measures can be imposed by, among others, supervisors as described in the Environmental Enforcement Decree, they are included as instruments in this chapter. However, it is not our intention to weigh the number of imposed safety measures against the total number of performed environmental enforcement inspections, as was the case with the previous instruments. We will only investigate how many and which safety measures were taken by which bodies.

The following table gives an overview for 2019 of the number and type of imposed safety measures, broken down by supervisory body. The supervisory authorities were also asked to report the number of safety measures for which it was not possible to enforce the measure within the imposed time limit. The security measures imposed by the governors and the mayors have already been discussed separately in chapters 2.3.1 and 2.3.4 respectively.

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<sup>30</sup> Explanatory Memorandum, Parliamentary Proceedings, Session 2006-2007, 13 June 2007, document 1249 (2006-2007) - no. 1, p.12 and p.15.

| Enforcement actor   | Suspension or execution of works, operations or activities | The prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon; | The total or partial closure of an establishment | The confiscation, storage or removal of relevant items, including waste materials and animals | The prohibition or evacuation of certain areas, grounds, buildings or roads | Other    | Combination | Total 2019 | it was not possible to have the safety measures carried out within the imposed time frame |
|---|--|--|--|---|---|----------|-------------|------------|---|
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions & Flemish Planning Agency for the Environment (formerly ALBON) | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Department of Environment and Spatial Development - Enforcement - Environmental Inspection (formerly AMI)   | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Department of Environment and Spatial Development - Territorial Development, Environmental Planning and Projects Divisions (formerly AMV)   | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Agency for Nature and Forests (ANB)   | 2  | 0  | 0  | 2   | 0   | 0        | 0           | 4          | 0   |
| Flemish Waterways plc;  | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          |   |
| Agency for Roads and Traffic (AWV)  | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          |   |
| Flemish Agency for Care and Health (VAZG)   | 0  | 78   | 0  | 0   | 0   | 0        | 0           | 78         | 0   |
| Public Waste Agency of Flanders (OVAM)  | 2  | 0  | 0  | 0   | 0   | 2        | 0           | 4          | 1   |
| Flemish Land Agency (VLM)   | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Flemish Environment Agency (VMM)  | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Department of Mobility and Public Works (MOW)   | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Agency for Maritime and Coastal Services  | /  | /  | /  | /   | /   | /        | /           | /          | /   |
| Provincial supervisors  | 0  | 0  | 0  | 0   | 0   | 0        | 0           | 0          | 0   |
| Municipal supervisors   | 3  | 0  | 0  | 2   | 2   | 1        | 4           | 12         | 0   |
| Supervisors of inter-municipal partnerships   | 1  | 1  | 0  | 0   | 0   | 0        | 0           | 2          | 0   |
| Local Police supervisors  | 0  | 0  | 0  | 10  | 0   | 0        | 0           | 10         | 0   |
| <b>Total</b>  | <b>8</b>   | <b>79</b>  | <b>0</b>   | <b>14</b>   | <b>2</b>  | <b>3</b> | <b>4</b>    | <b>110</b> | <b>1</b>  |

Table 36 Nature of the imposed safety measures

A total of 110 safety measures were imposed in 2019.

The majority, i.e. 71% of the total number of imposed safety measures, are imposed by the Flemish Agency for Care and Health. Besides VAZG, only two regional supervisory authorities imposed safety measures in 2019, namely the Agency for Nature and Forests and the Public Waste Agency of Flanders. The municipal supervisors and the Local police supervisors imposed 12 and 10 safety measures respectively in 2019.

72% of the cases in 2019 concerned the prohibition on the use or the sealing of buildings, installations, machinery, apparatus, means of transport, containers, land and anything therein or thereon.

The data show that in 2019 only one imposed safety measure was implemented within the imposed deadline.



## 4 EVALUATION OF THE FLEMISH ENVIRONMENTAL SANCTIONING POLICY

The addition of a title XVI "Supervision, enforcement and safety measures" to the decree of 5 April 1995 on the general provisions on environmental policy (DABM) created a framework that, in addition to criminal sanctions, also allows administrative sanctions to be imposed by means of alternative and exclusive administrative fines, with or without expropriation of unlawful material benefits<sup>31</sup>. For this purpose, a distinction is made between environmental crimes and environmental offences. The latter are actually minor violations with a limited impact on people or the environment, and they are listed exhaustively by the Government of Flanders in the appendices to the implementing decree of the Environmental Enforcement Decree<sup>32</sup>. These environmental offences cannot be punished by criminal law, but they can be sanctioned with an exclusive administrative fine by the regional sanctioning entity of the Enforcement Division of the Department of Environment and Spatial Development (see: regional sanctioning entity) that was set up for that purpose. On the other hand, an alternative administrative fine can only be imposed for environmental crimes. In principle, such offences can be dealt with under criminal law, but if the Public Prosecutor decides not to treat them under criminal law and informs the regional sanctioning entity in time, the environmental crimes can be sanctioned by the regional sanctioning entity with an alternative administrative fine. The decision by the Public Prosecutor whether or not to prosecute the case is made on the basis of guidelines in the 'Sorting Memorandum'.<sup>33</sup> 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 prosecutor's offices themselves and which cases will be submitted to the regional sanctioning entity for administrative fines, so that every official report is properly dealt with.

A supervisor has the power to compile an official incident report in the event that environmental infringements are encountered. This incident report is immediately transmitted to the regional sanctioning entity. The regional sanctioning entity may impose an exclusive fine, with or without expropriation of unlawful material benefits. Upon receipt of the incident report, the regional sanctioning entity has a 60-day period within which to notify the suspected offender of its intention to impose an exclusive administrative fine (which may or may not involve the expropriation of unlawful material benefits). Within 90 days further to the notification, to the regional sanctioning entity will decide on whether or not to impose an exclusive administrative fine, which may or may not involve the expropriation of unlawful material benefits. The suspected offender is to be notified of this decision within 10 days.

When an environmental crime is established, the reporting officer immediately transmits an official report to the Public Prosecutor attached to the court with jurisdiction for the legal district where the environmental offence was committed. Along with the formal report, a written petition is to be included in which the Public Prosecutor is requested to pronounce on whether or not the

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<sup>31</sup> An unlawful material benefits is a sanction whereby an offender is obliged to pay a sum of money, estimated or otherwise, equivalent to the gross amount of the unlawful material benefits derived from the environmental infringement or crime (as defined in the environmental glossary).

<sup>32</sup> The 'administrative obligation' criterion was deleted with a view to further decriminalising certain violations of environmental law (amendment to the Environmental Enforcement Decree 2013).

<sup>33</sup> <https://omgeving.vlaanderen.be/sorteernota-van-het-openbaar-ministerie>

environmental offence is to be criminally prosecuted. The Public Prosecutor has 180 days from the date on which he received the official report to return his reply. Before this time limit has expired it may be extended once only by a further period of no more than 180 days. Any such extensions must be justified. The regional sanctioning entity is to be informed of this extension. Both the decision by the Public Prosecutor to bring the environmental offence before the criminal court, as well as the Public Prosecutor's failure to notify the regional sanctioning entity of his decision in timely fashion, preclude the imposition of an administrative fine by the regional sanctioning entity.

If the Public Prosecutor has informed the regional sanctioning entity in time of his decision not to criminally prosecute the environmental offence, the regional sanctioning entity is to initiate the procedure for the possible imposition of an alternative administrative fine. Upon receipt of this decision, the regional sanctioning entity 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). The regional sanctioning entity 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). The suspected offender is to be notified of this decision within 10 days.

Both in the case of an alternative and an exclusive administrative fine, the suspected offenders may file an appeal with the Enforcement Court (formerly the Environmental Enforcement Court) against the decisions of the regional sanctioning entity<sup>34</sup>.

In 2012, the administrative transaction was introduced with the Decree of 20 April 2012 containing various provisions relating to the environment and nature<sup>35</sup>, the procedure for which entered into force on 23 August 2012. The Government of Flanders Order of 6 July 2012 elaborates on the modalities of the administrative transaction<sup>36</sup>. Since 2012, and to impose an alternative or exclusive administrative fine, the regional sanctioning entity 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. However, the requirement in all of these cases is that the offences need to be irrefutably established on the part of the offender. If the offender fails to pay this type of "settlement proposal" on time, the regular fining procedure is then resumed. This instrument is mainly aimed at minor environmental and nuisance offences, which have a limited impact on the natural environment, but are socially offensive. For environmental offences, the administrative transaction may not exceed 2,000 euros, whereas for environmental infringements the transaction may not exceed 500 euros.

Prior to the Environmental Enforcement Decree, the Flemish Land Agency was already authorised to impose administrative fines for the violations listed in Article 63 of the Decree of 22 December 2006 on the protection of water against pollution caused by nitrates from agricultural sources (Manure Decree). The decree stipulates who can be fined and the amount of the fine. For serious violations, included in article 71 of the same decree, the Flemish Land Agency could already draw up an official report with possible criminal prosecution by the Public Prosecutor as a consequence.

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<sup>34</sup> With the entry into force of the regulations on the enforcement of the integrated environmental permit, the Environmental Enforcement Court was renamed the 'Enforcement Court' on 1 March 2018.

<sup>35</sup> Publication in the Belgian Official Gazette: 22 May 2012.

<sup>36</sup> GFO of 6 July 2012, BOG 13 August 2012

This section, which evaluates the Flemish sanctioning policy in 2019, will therefore not only look at the activities of the public prosecutor’s offices, but also at those of the regional sanctioning entity, the Enforcement Court and those of the Flemish Land Agency.

**4.1 EVALUATION OF THE CRIMINAL SANCTIONING POLICY**

As already described above, when an environmental crime is established the reporting officer immediately transmits an official report to the Public Prosecutor attached to the court with jurisdiction for the legal district where the environmental offence was committed. It is therefore important to evaluate, in this environmental enforcement report, the criminal sanctioning policy in 2019. The Flemish High Enforcement Council for Spatial Planning and Environment has therefore asked the Board of Procurators General, to report, among other things, how many cases were submitted to the public prosecutor’s offices of the Flemish Region and how these cases were processed.

As with the other enforcement bodies, the public prosecutor’s offices were also asked how many FTEs were used for environmental enforcement tasks in 2019. The table below gives the number of FTEs for environmental public prosecutors.

| <b>Environmental public prosecutors</b> | <b>FTEs</b> |
|---|-------------|
| Antwerp                                 | 2           |
| Limburg                                 | 0.8         |
| Halle-Vilvoorde                         | 0.2         |
| Leuven                                  | 0.5         |
| East Flanders                           | 1.9         |
| West Flanders                           | 1.15        |
| Total                                   | 6.55        |

*Table 37 The number of FTEs for environmental public prosecutor magistrates*

The public prosecutor’s offices point out, with regard to the information above, that each public prosecutor magistrate who is responsible for dealing with criminal cases relating to the environment, is also responsible for several other tasks in the context of the schedule. This broad(er) set of tasks, together with the absence of a specifically developed workload measurement, explains why it is not possible to calculate the number of FTEs for the environment with 100% accuracy. The reported FTE figures are therefore estimates.

Before the other figures can be discussed, a few comments about the data must be made first.

The figures are taken from a central database of the Board of Procurators General. This database is based solely on the registrations made by the criminal divisions of the public prosecutor’s offices at the courts of first instance and does not contain any data on the number of environmental cases handled by the public prosecutor’s offices or cases related to the environment handled by the prosecutor’s offices of the police.<sup>37</sup>

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.

<sup>37</sup> It should be noted that some cases relating to environmental management law fall under the competence of the prosecutor’s offices of the police and the police courts (e.g. the official reports drawn up for violations of forest or fisheries legislation, even if the violations are considered to be misdemeanours). These environmental cases are therefore not all included in the reported figures.

The provided figures are based on the latest data extraction on 11 January 2020. All data relating to the progress of a case are therefore limited to the situation on that extraction date. It should be noted that it is in fact still too early to draw conclusions, based on the data extraction of 11 January 2020, with regard to how the handling of cases differs compared to cases registered in 2019. The figures are only indicative because the progress of these cases may have evolved since the extraction date. Nevertheless, an effort will be made to identify some trends.

Cases brought to the Public Prosecutor's Office are assigned a main indictment code and one or more additional indictment codes (prevention codes) where applicable. A main indictment code must therefore always be assigned to the case as soon as it is entered in the public prosecutors' computerised system. The registration of additional indictment codes does not occur everywhere; some public prosecutor's offices do not register them.

The following statistics are based on all cases for which at least one of the following indictment codes, as used by the public prosecutor's offices, was registered, with a breakdown by topic (environmental management law, waste, manure, permit and emissions) as proposed by the VHRM<sup>38</sup>.

- ▶ Environmental management law:
  - 63A - Hunting
  - 63B - Fishing
  - 63M - Forest decree
  - 63N - Washington Convention - protected animal species, plants and ivory
  - 64J - Decree on nature conservation and the natural environment, including the prohibition and authorisation requirement for changes to vegetation and small landscape features
- ▶ Waste:
  - 64E - Unauthorised dumping
  - 64F - Waste management
  - 64L - Import and transit of waste (L 09.07.1984)
- ▶ Manure:
  - 63I - Fertilizers
  - 63O - Manure decree
- ▶ Permit:
  - 64D - Commodo-Incommodo (environmental permit)
  - 64H - Operation of an establishment without a permit
  - 64I - Non-compliance with VLAREM legislation
- ▶ Air/water/soil/noise (emissions):
  - 64A - Air and water pollution

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<sup>38</sup> It should be noted that the final selection also includes cases pertaining to infringements that do not strictly fall under the Environmental Enforcement Decree. It should also be noted that cases registered under code '63N' fall under regional jurisdiction, except import, export and transit of exotic plant and animal species, which is a federal competence. To clarify the above data, it should be stated that, strictly speaking, code 63N (Washington Convention – protected species, plants and ivory) does not fall under environmental management since environmental management law is defined in the Environmental Enforcement Order as the set of legal rules for 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 hand, more specifically the regulations referred to in article 16.1.1, first paragraph, 2°, 3°, 4°, 7°, 14°, 15° and 16° of the Environmental Enforcement Decree. Finally, it should be noted that, in addition to cases relating to the manure decree (code 63O), cases with code "63I - Fertilisers" were also selected; the latter were also included because there is a real chance that some of the cases registered by the public prosecutor's office with code 63I are in fact infringements that are followed up regionally. While the deliberate choice to make a fairly wide selection may have led to a number of cases being wrongly counted in this contribution to the environmental enforcement report, it is also the case that there is no specific indictment code for other infringements that may concern both federal and regional matters (for example, infringements relating to certain product standards).

- 64B - Carbon oxide (CO)
- 64C - Noise nuisance, decibels in urban environment (R.D. 24/02/1977)
- 64G - Illegal water extraction
- 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 charge of those selected.

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 concerns in particular the 'simplified official reports on listing'<sup>39</sup>, the 'autonomous police investigations still in progress', the 'simplified autonomous police investigations' and the 'autonomous police investigations into unknown perpetrators'. In most public prosecutor's offices, the simplified official reports drawn up by the police forces are not recorded in the system. As such, they were not taken into account in the following figures (as opposed to data from ANG and presented in 2.2.1). However, if the official report was requested by the 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 prosecutor's 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 priority official reports<sup>40</sup> 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'. However, it was indicated that responding to this question presupposes the creation of specific codes involving technical adaptations and new registration guidelines. To date, the database of the Board of Procurators General does not allow a distinction to be made between priority and non-priority cases within the selected cases. However, it was indicated that a solution was being sought.

Reference can also be made in this section to the various partnerships between public prosecutor's offices (PPPs). Within the jurisdiction of Ghent, a partnership has existed between the former public prosecutor's offices (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

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<sup>39</sup> 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.

<sup>40</sup> 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'.

prosecutor's offices. This is relevant for this analysis given that the former public prosecutor's office 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, 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, bear in mind 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.

Within the jurisdiction of Antwerp, the case distribution regulation of the Antwerp Court of First Instance was established by Royal Decree of 16 February 2016 and entered into force on 1 March 2016. From that date, the Antwerp division has exclusive jurisdiction over all criminal cases of the district with regard to the environment and urban planning and without the aforementioned distinction. When reviewing the table on case progress, it should therefore be noted that the magistrates of the Antwerp division are responsible for decisions taken in the other divisions of the district of Antwerp.

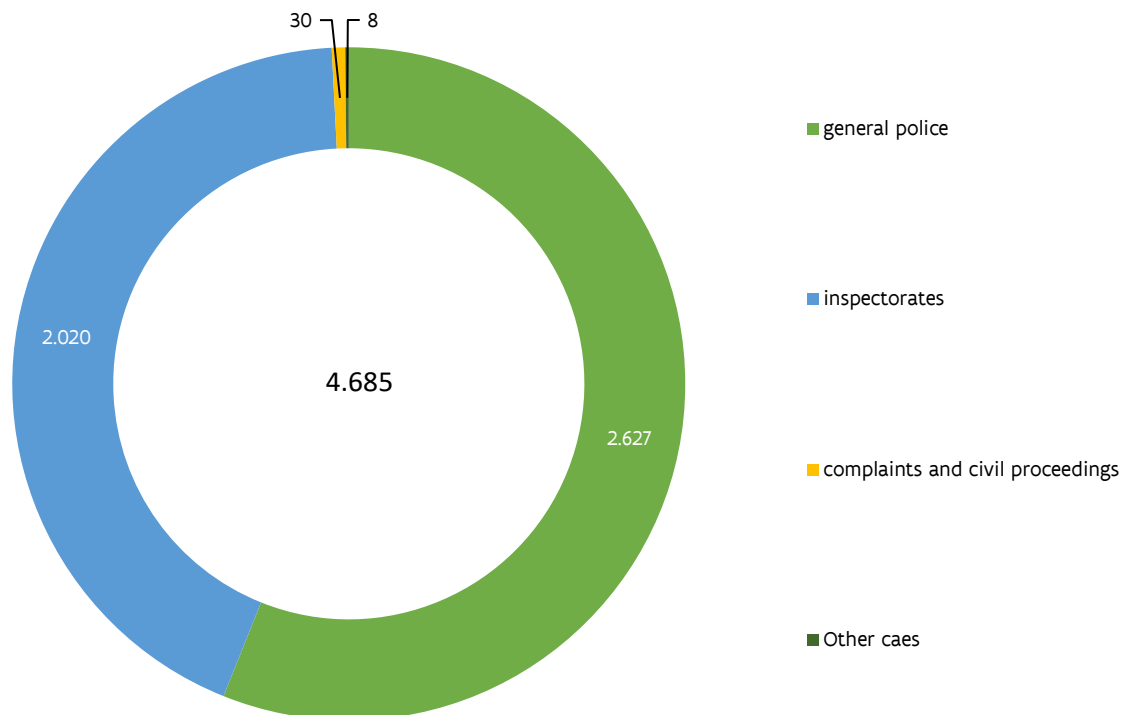
Since 2017, cases relating to the environment and urban planning in the district of Limburg have also been centralised in the Hasselt division. So also when reviewing this table on case progress, take into account that the magistrates of the Hasselt division are responsible for the decisions taken in the Tongeren division of the district of Limburg.

The unit of measure 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 2019. This will be done on the basis of the selected indictment codes and, if possible, by the reporting authority. Then we will consider the latest progress (i.e. 11 January 2020) of the cases received by the public prosecutor's offices in 2019, 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 11 January 2020, 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 11 January 2020 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.

#### 4.1.1 Inflow

The following graph shows the number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019, per reporting authority, subdivided into four different categories, namely general police; inspectorates; complaints and civil proceedings; and other cases.<sup>41</sup>



*Graph 10 The number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019 per reporting authority - Source: database of the Board of Procurators General*

In total, the public prosecutor's offices received 4,685 cases relating to the environment in 2019, of which 56.08% - or 2,627 cases - came from the general police and 43.12% - or 2,020 cases - came from the inspectorates. The section on the general police includes both the Local and the federal police services. However, the inspectorates are the administrative services with limited reporting powers, such as the regional environmental administrations (supervisors). A small proportion of the total number of cases received, namely almost 0.17% or 8 cases, were 'other cases'. These are cases referred from other public prosecutor's offices and courts, also from other sections of the same public prosecutor's office, from foreign public prosecutor's offices/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 all cases that could not be classified in any of the other three categories. The cases received from the municipal supervisors and the supervisors of the inter-municipal associations also fall under this category. In addition, 30 cases - or 0.64% - related to complaints and civil proceedings. These are complaints from private individuals, as well as complaints from bailiffs or from private organisations and civil parties.

More than half of the cases received by the public prosecutor's offices in 2019 were drawn up by the general police. As already mentioned in chapter 2, the general police drew up 11,574 official reports on the environment in 2019. This number not only includes the initial official reports but also the

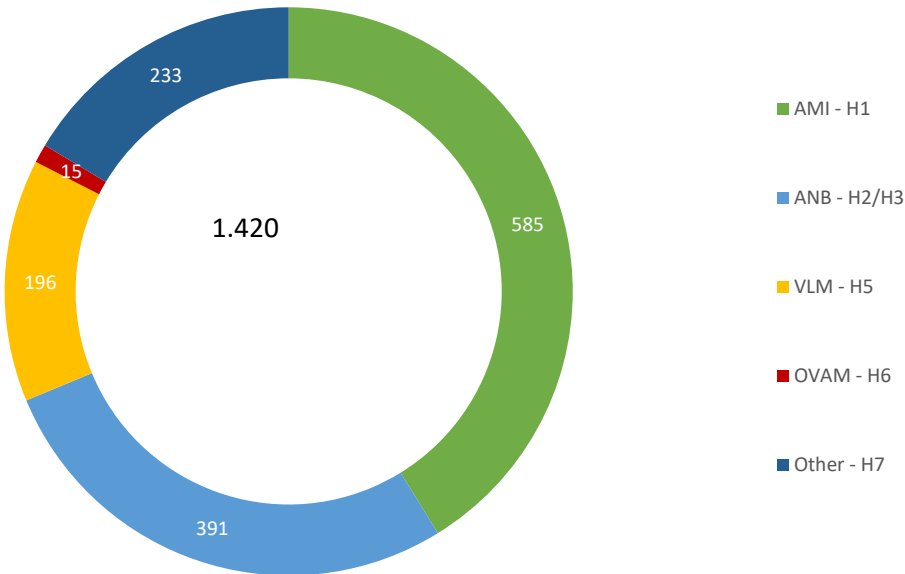
<sup>41</sup> The cases registered with the public prosecutor's office of the police courts are not included in the reported figures.

simplified reports, so this may explain the difference with the number of cases received by the public prosecutor’s offices in 2019. It should be noted that no distinction can be made here between official reports drawn up by the local police in their general reporting capacity on the one hand and official reports drawn up by local police supervisors on the other.

In 2003, a technical working group was set up within the Prosecution Policy Commission <sup>42</sup> with the aim of improving the recognisability of the cases submitted by the environmental services of the Flemish Region to the public prosecutor’s offices. The only code that was foreseen at the time within the environmental services of the Flemish Region was M2. However, it was decided to use, as from 1 January 2005, specific codes within the reference numbers provided by the environmental services to the public prosecutor’s offices. The following codes were assigned:

- ▶ H1: Department of Environment and Spatial Development - Enforcement Division - Environmental Inspection (Environmental Inspectorate AMI)
- ▶ H2: ANB (Agency for Nature and Forests)<sup>43</sup>
- ▶ H4: Water – VMM
- ▶ H5: Manure Bank - VLM
- ▶ H6: OVAM
- ▶ H7: other<sup>44</sup>

The use of these specific reference numbers made it possible to produce the following graph in which a further subdivision is made of the 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor’s offices in the Flemish Region in 2019 per Flemish environmental



*Graph 11 The number of 'environmental enforcement' cases coming from the Flemish environmental services as recorded by the criminal divisions of the public prosecutor’s offices in the Flemish Region in 2019 - Source: database of the Board of Procurators General*

<sup>42</sup> The Prosecution Policy Commission is the predecessor of the VHRM, and its objective was to be a working platform on environment and spatial planning at the regional level, where priorities were set and agreements were made between the official level and the public prosecutor’s offices. However, unlike the VHRM, the Prosecution Policy Committee did not have a legally established framework.

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

<sup>44</sup> H7 consists mainly of official reports from the 'Roads and Traffic Agency' and the 'Waterways and Marine Affairs Agency'. Since there was a chance that these services would be modified without a clear idea of the exact nature of the change, it was decided to allow both to use the code H7. The 'Roads and Traffic Agency' would no longer make use of the code 'WG' that was previously reserved for them. *[The Waterways and Maritime Affairs Agency is a term used prior to the Better Administrative Policy. These are now the following agencies: Waterwegen en Zeekanaal (Waterways and Sea Canal), De Scheepvaart NV, Maritime Services and Coast.]*



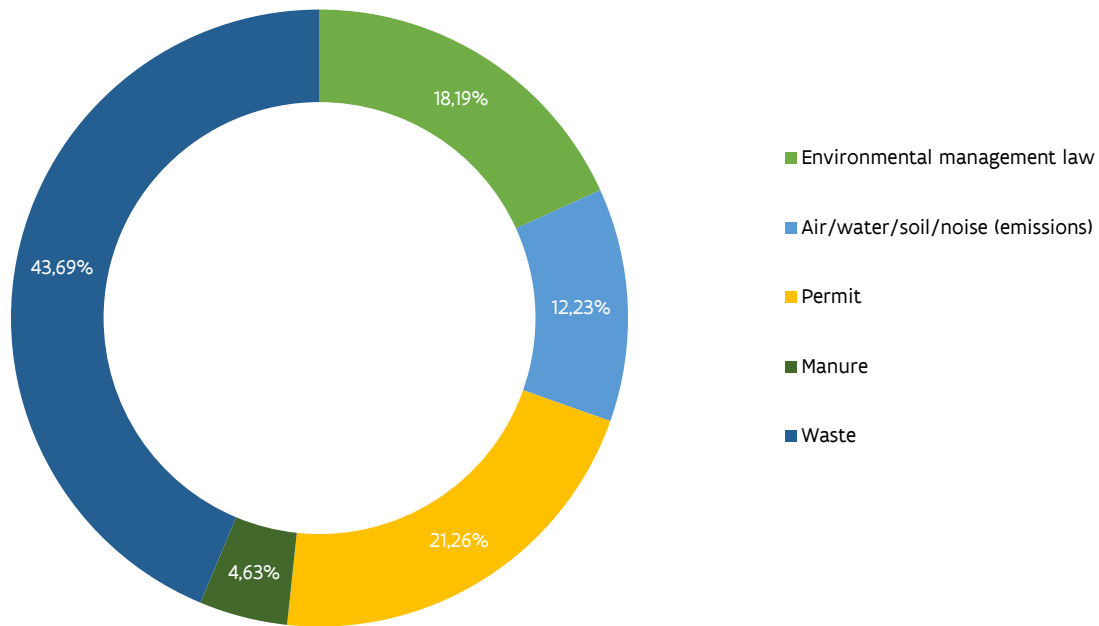
enforcement agency. This clearly shows how many cases were delivered per Flemish environmental service as reporting authority.

In total, 1,420 cases that originated from the Flemish inspection services and that used the codes were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019. The majority (41.20%) of these cases originate from the Enforcement Division - Environmental Inspection (Environmental Inspectorate AMI). The ANB also represents a considerable share of the total number of cases originating from the Flemish inspection services, namely 27.54%. OVAM and VLM are responsible for 1.06% and 13.80% respectively.

In comparison with the chapter 'Evaluation of the official report instrument', a number of differences can be noted between the number of official reports drawn up and reported by the regional enforcement bodies and the number received by the criminal divisions of the public prosecutor's offices of the Flemish Region. For example, the ANB indicated that 459 initial official reports were drawn up in 2019, even though the public prosecutor's offices only received 391 in 2019. This is explained by the fact that this agency also draws up official reports that are handled by police prosecutors. The numbers reported by the Enforcement Division - Environmental Inspection (Environmental Inspectorate) and the Flemish Land Agency, 575 and 219 respectively, was closer to the number received by the public prosecutor's offices, namely 585 and 196 respectively in 2019. The other regional regulatory bodies indicated that they drew up a total of 246 official reports in 2019, whereas the public prosecutor's offices received 233 cases categorised as 'other'. The figures from the public prosecutor's offices may be an underestimation, 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. For this reason, the VHRM once again recommends that the various environmental administrations use these codes consistently to ensure correct data collection and reporting.

An overview has already been provided of the various indictment codes used to record Environmental Enforcement cases. This allows us to provide an overview for 2019 in the following graphs and tables of the proportion of each indictment code in the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019.

The graph below shows the percentages of the number of cases recorded with the indictment codes for waste, manure, permit, air/water/soil/noise (emissions), and environmental management law in relation to the total number of cases recorded with one of these indictment codes in 2019, namely 4,685 cases.



*Graph 12 The percentage share of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019 per main indictment code - Source: database of the Board of Procurators General*

In more than 43% of the total number of 'Environmental Enforcement' cases recorded by the criminal departments of the public prosecutors of the Flemish Region in 2019, the main indictment code related to the waste theme. This concerned 2,047 cases. Cases connected to environmental management law and emissions represented around 18% and 12% respectively of the total number of cases in 2019, i.e. 852 and 573 cases respectively. In addition, 996 cases, or more than 21%, were related to permits, and 217 cases, representing just under than 5% of the total number of 'Environmental Enforcement' cases were related to manure.

The following table provides a further breakdown of the main indictment codes of environmental management law, emissions, permit, manure and waste.

|                                   |  | n            | %          |
|-----------------------------------|--|--------------|------------|
| Environmental management law      | 63A - Hunting  | 157          | 3.35       |
|                                   | 63B - Fishing  | 109          | 2.33       |
|                                   | 63M - Forest decree  | 150          | 3.2        |
|                                   | 63N - Protected species of animals, plants and ivory (Washington Convention, 9 March 1973) | 165          | 3.52       |
|                                   | 64J - Flemish decree on nature conservation and the natural environment (21 October 1997)  | 271          | 5.78       |
|                                   | Total for section  | 852          | 18.19      |
| Air/water/soil/ noise (emissions) | 64A - Air and water pollution  | 294          | 6.28       |
|                                   | 64B - Carbon monoxide (CO)   | 13           | 0.28       |
|                                   | 64C - Noise standards in the urban environment (Royal Decree of 24 February 1977)          | 58           | 1.24       |
|                                   | 64G - Illegal water extraction   | 4            | 0.09       |
|                                   | 64M - Surface water pollution  | 134          | 2.86       |
|                                   | 64N - Groundwater pollution  | 70           | 1.49       |
|                                   | Total for section  | 573          | 12.23      |
| Permit                            | 64D - Commodo - incommodo (environmental permit)   | 30           | 0.64       |
|                                   | 64H - Operation of an establishment without a permit                                       | 206          | 4.4        |
|                                   | 64I - Non-compliance with Vlare legislation  | 760          | 16.22      |
|                                   | Total for section  | 996          | 21.26      |
| Manure                            | 63I - Fertilizers  | 59           | 1.26       |
|                                   | 63O- Manure decree   | 158          | 3.37       |
|                                   | Total for section  | 217          | 4.63       |
| Waste                             | 64E - Unauthorised dumping   | 1,549        | 33.06      |
|                                   | 64F - Waste management   | 466          | 9.95       |
|                                   | 64L - Import and transit of waste (Act of 12 May 2011)                                     | 32           | 0.68       |
|                                   | Total for section  | 2,047        | 43.69      |
| <b>Total</b>                      |  | <b>4,685</b> | <b>100</b> |

Table 38 The number of 'environmental enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019 per main indictment code - Source: database of the Board of Procurators General

The largest share (more than 43%) of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices of the Flemish Region concerned waste in 2019, as in previous years. The table above shows that, within the theme of waste, most cases were recorded under indictment code 64E. These 1,549 cases all related to illegal dumping. The cases concerning illegal dumping not only form the largest part within the theme of waste (76%), but also within the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in 2019. As many as 33% of all cases in 2019 related to illegal dumping.

The cases with indictment codes 63I 'Fertilizers' and 63O 'Manure Decree' account for only a small proportion of the total number of 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, i.e. 1.2% and 3.3% respectively. This could be explained by the fact that the Flemish Land Agency is authorised to issue administrative fines for some of the violations under the Manure Decree since 2006 (see below).

#### 4.1.2 Progress state

In addition to the influx of 'Environmental Enforcement' cases, it was once again possible to obtain figures for this environmental enforcement report on the progress state of Environmental Enforcement cases for the study period. However, it should be recalled that the data extraction dates from 11 January 2020. This means that it is not yet possible to draw any firm conclusions as to the handling of 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 following figures give a somewhat distorted picture. Nevertheless, an effort will be made to describe a number of trends.

The classification is based on the following states of progress:

##### **PRELIMINARY EXAMINATION**

The cases that were still in preliminary investigation on 11 January 2020.

##### **WANTED PERPETRATOR**

This heading includes cases in which a suspect was reported as wanted on 11 January 2020. As long as the suspect is not found, this progress state will continue to apply.

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

Cases without further action or dismissals are provisionally not prosecuted and the preliminary investigation is terminated. The decision to take no further action is in principle always provisional. As long as the criminal proceedings do not lapse, the case may be reopened.

##### **REFERRAL CASES**

This section consists of the cases that were referred on 11 January 2020 to another public prosecutor's office or other (judicial) bodies. Insofar as they do not return to the initial public prosecutor's office, the referred cases remain here in this progress state. They can therefore be regarded as closed for the initial public prosecutor's office. They are reopened under a different reference number at the receiving public prosecutor's office.

##### **PRAETORIAN PROBATION**

This heading covers cases which, on 11 January 2020, have not (yet) been the subject of criminal proceedings, provided that certain measures imposed by the public prosecutor's office have been complied with.

##### **MUNICIPAL ADMINISTRATIVE SANCTION**

This heading covers cases that were transferred to a public administration on 11 January 2020 with a view to a possible municipal administrative sanction.

##### **NON-MUNICIPAL ADMINISTRATIVE SANCTION**

This heading covers cases that were transferred to a public administration<sup>45</sup> on 11 January 2020 for a possible non-municipal administrative sanction.

##### **AMICABLE SETTLEMENT**

The amicable settlement category includes cases in which an amicable settlement was proposed, cases in which an amicable settlement has not yet been paid (in full), cases which were concluded by the payment of the amicable settlement and in which the criminal proceedings lapse and finally cases

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<sup>45</sup> In the context of the Environmental Enforcement Decree and the Manure Decree, these are the regional sanctioning entity and the VLM Manure Bank respectively.

in which the amicable settlement was refused but which have not yet moved to the next progress state.

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

The mediation in criminal cases section consists of cases in which the Public Prosecutor's Office has decided to propose a procedure for mediation in criminal cases to the parties involved. This category includes cases for which a mediation in criminal cases was proposed and for which a decision still has to be made, cases which were concluded as a result of successful mediation of criminal cases and for which the criminal proceedings lapse, and finally cases for which the perpetrator did not meet the required conditions but which have not yet moved to the next progress state.

#### **INVESTIGATION**

The investigation section consists of cases that have been the subject of judicial investigation and that have not yet been brought before the court in chambers for legal proceedings.

#### **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 remain in this progress state.

#### **SUMMONS & FURTHER**

This section consists of the cases where a summons or subsequent decision was taken. These are cases in which a summons, a determination before the criminal court, a judgement, an objection, an appeal, etc. occur.

#### **UNKNOWN/ERROR**

This section 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'.

The following table gives an overview of the latest progress states as of 11 January 2020 for 'Environmental Enforcement' cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2019. Both the total cases in Flanders are shown as well as the cases per public prosecutor's office.

When reading this table, the existing public prosecutor partnerships must also be considered (see 4.1).

|   | preliminary investigation |              | wanted perpetrator |             | without further action |              | referral case |            | praetorian probation |             | municipal administrative sanction |             | non-municipal administrative sanction |              | amicable settlement |             | mediation in CC |             | investigation |             | court in chambers |             | summons & further |             | referral to chief of police |             | unknown/err or |             | total        |            |
|---|---------------------------|--------------|--------------------|-------------|------------------------|--------------|---------------|------------|----------------------|-------------|-----------------------------------|-------------|---------------------------------------|--------------|---------------------|-------------|-----------------|-------------|---------------|-------------|-------------------|-------------|-------------------|-------------|-----------------------------|-------------|----------------|-------------|--------------|------------|
|   | n                         | %            | n                  | %           | n                      | %            | n             | %          | n                    | %           | n                                 | %           | n                                     | %            | n                   | %           | n               | %           | n             | %           | n                 | %           | n                 | %           | n                           | %           | n              | %           | n            | %          |
| <b>DISTRICT OF ANTWERP</b>                                      | 253                       | 27.86        | 7                  | 0.77        | 162                    | 17.84        | 6             | 0.66       | 38                   | 4.19        | 2                                 | 0.22        | 380                                   | 41.85        | 27                  | 2.97        | .               | .           | 8             | 0.88        | 3                 | 0.33        | 22                | 2.42        | .                           | .           | .              | .           | 908          | 100        |
| Antwerp Public Prosecutor's Office – Antwerp division           | 248                       | 27.74        | 7                  | 0.78        | 160                    | 17.9         | 6             | 0.67       | 35                   | 3.91        | 2                                 | 0.22        | 379                                   | 42.39        | 27                  | 3.02        | .               | .           | 8             | 0.89        | 1                 | 0.11        | 21                | 2.35        | .                           | .           | .              | .           | 894          | 100        |
| Antwerp Public Prosecutor's Office – Mechelen division          | 5                         | 41.67        | .                  | .           | 2                      | 16.67        | .             | .          | 3                    | 25          | .                                 | .           | 1                                     | 8.33         | .                   | .           | .               | .           | .             | .           | .                 | .           | 1                 | 8.33        | .                           | .           | .              | .           | 12           | 100        |
| Antwerp Public Prosecutor's Office – Turnhout division          | .                         | .            | .                  | .           | .                      | .            | .             | .          | .                    | .           | .                                 | .           | .                                     | .            | .                   | .           | .               | .           | .             | .           | 2                 | 100         | .                 | .           | .                           | .           | .              | .           | 2            | 100        |
| <b>DISTRICT OF LIMBURG</b>                                      | 76                        | 15.54        | 1                  | 0.2         | 143                    | 29.24        | 4             | 0.82       | 10                   | 2.04        | 3                                 | 0.61        | 216                                   | 44.17        | 9                   | 1.84        | 1               | 0.2         | 7             | 1.43        | 1                 | 0.2         | 17                | 3.48        | .                           | .           | 1              | 0.2         | 489          | 100        |
| Limburg Public Prosecutor's Office – Hasselt division           | 41                        | 16.33        | .                  | .           | 73                     | 29.08        | 1             | 0.4        | 3                    | 1.2         | 1                                 | 0.4         | 104                                   | 41.43        | 4                   | 1.59        | 1               | 0.4         | 7             | 2.79        | .                 | .           | 15                | 5.98        | .                           | .           | 1              | 0.4         | 251          | 100        |
| Limburg Public Prosecutor's Office – Tongeren division          | 35                        | 14.71        | 1                  | 0.42        | 70                     | 29.41        | 3             | 1.26       | 7                    | 2.94        | 2                                 | 0.84        | 112                                   | 47.06        | 5                   | 2.1         | .               | .           | .             | .           | 1                 | 0.42        | 2                 | 0.84        | .                           | .           | .              | .           | 238          | 100        |
| <b>DISTRICT OF BRUSSELS</b>                                     | 139                       | 27.42        | 1                  | 0.2         | 123                    | 24.26        | 8             | 1.58       | 5                    | 0.99        | 6                                 | 1.18        | 173                                   | 34.12        | 41                  | 8.09        | .               | .           | 1             | 0.2         | .                 | .           | 10                | 1.97        | .                           | .           | .              | .           | 507          | 100        |
| Halle-Vilvoorde Public Prosecutor's Office                      | 139                       | 27.42        | 1                  | 0.2         | 123                    | 24.26        | 8             | 1.58       | 5                    | 0.99        | 6                                 | 1.18        | 173                                   | 34.12        | 41                  | 8.09        | .               | .           | 1             | 0.2         | .                 | .           | 10                | 1.97        | .                           | .           | .              | .           | 507          | 100        |
| <b>DISTRICT OF LEUVEN</b>                                       | 47                        | 18.43        | 1                  | 0.39        | 76                     | 29.8         | 4             | 1.57       | 1                    | 0.39        | 4                                 | 1.57        | 91                                    | 35.69        | 19                  | 7.45        | .               | .           | 1             | 0.39        | .                 | .           | 11                | 4.31        | .                           | .           | .              | .           | 255          | 100        |
| <b>DISTRICT OF EAST FLANDERS</b>                                | 350                       | 24.15        | 26                 | 1.79        | 323                    | 22.29        | 18            | 1.24       | 3                    | 0.21        | 1                                 | 0.07        | 705                                   | 48.65        | 4                   | 0.28        | .               | .           | 5             | 0.35        | .                 | .           | 14                | 0.97        | .                           | .           | .              | .           | 1,449        | 100        |
| East Flanders Public Prosecutor's Office – Ghent division       | 298                       | 25.91        | 18                 | 1.57        | 229                    | 19.91        | 14            | 1.22       | 3                    | 0.26        | 1                                 | 0.09        | 570                                   | 49.57        | 1                   | 0.09        | .               | .           | 3             | 0.26        | .                 | .           | 13                | 1.13        | .                           | .           | .              | .           | 1,150        | 100        |
| East Flanders Public Prosecutor's Office – Dendermonde division | 47                        | 16.85        | 8                  | 2.87        | 89                     | 31.9         | .             | .          | .                    | .           | .                                 | .           | 129                                   | 46.24        | 3                   | 1.08        | .               | .           | 2             | 0.72        | .                 | .           | 1                 | 0.36        | .                           | .           | .              | .           | 279          | 100        |
| East Flanders Public Prosecutor's Office – Oudenaarde division  | 5                         | 25           | .                  | .           | 5                      | 25           | 4             | 20         | .                    | .           | .                                 | .           | 6                                     | 30           | .                   | .           | .               | .           | .             | .           | .                 | .           | .                 | .           | .                           | .           | .              | .           | 20           | 100        |
| <b>DISTRICT OF WEST FLANDERS</b>                                | 337                       | 31.29        | 4                  | 0.37        | 190                    | 17.64        | 2             | 0.19       | 11                   | 1.02        | 6                                 | 0.56        | 498                                   | 46.24        | 12                  | 1.11        | 1               | 0.09        | 12            | 1.11        | .                 | .           | 3                 | 0.28        | 1                           | 0.09        | .              | .           | 1,077        | 100        |
| West Flanders Public Prosecutor's Office – Bruges division      | 16                        | 44.44        | .                  | .           | 7                      | 19.44        | 1             | 2.78       | .                    | .           | .                                 | .           | 1                                     | 2.78         | 10                  | 27.78       | .               | .           | .             | .           | .                 | .           | .                 | .           | 1                           | 2.78        | .              | .           | 36           | 100        |
| West Flanders Public Prosecutor's Office – Kortrijk division    | 318                       | 30.72        | 4                  | 0.39        | 180                    | 17.39        | 1             | 0.1        | 11                   | 1.06        | 6                                 | 0.58        | 497                                   | 48.02        | 2                   | 0.19        | 1               | 0.1         | 12            | 1.16        | .                 | .           | 3                 | 0.29        | .                           | .           | .              | .           | 1,035        | 100        |
| West Flanders Public Prosecutor's Office – Ypres division       | 3                         | 60           | .                  | .           | 2                      | 40           | .             | .          | .                    | .           | .                                 | .           | .                                     | .            | .                   | .           | .               | .           | .             | .           | .                 | .           | .                 | .           | .                           | .           | .              | .           | 5            | 100        |
| West Flanders Public Prosecutor's Office – Veurne division      | .                         | .            | .                  | .           | 1                      | 100          | .             | .          | .                    | .           | .                                 | .           | .                                     | .            | .                   | .           | .               | .           | .             | .           | .                 | .           | .                 | .           | .                           | .           | .              | .           | 1            | 100        |
| <b>Flanders 2019</b>  | <b>1,202</b>              | <b>25.66</b> | <b>40</b>          | <b>0.85</b> | <b>1,017</b>           | <b>21.71</b> | <b>42</b>     | <b>0.9</b> | <b>68</b>            | <b>1.45</b> | <b>22</b>                         | <b>0.47</b> | <b>2,063</b>                          | <b>44.03</b> | <b>112</b>          | <b>2.39</b> | <b>2</b>        | <b>0.04</b> | <b>34</b>     | <b>0.73</b> | <b>4</b>          | <b>0.09</b> | <b>77</b>         | <b>1.64</b> | <b>1</b>                    | <b>0.02</b> | <b>1</b>       | <b>0.02</b> | <b>4,685</b> | <b>100</b> |

Table 39 The number of 'Environmental Enforcement' cases recorded by the criminal public prosecution offices of the Flemish Region in 2019, whether or not by transfer to a parent case, per judicial district

The data in the table above shows that almost 26% of the total number of 'Environmental Enforcement' cases recorded by the criminal prosecution offices of the Flemish Region were still in the preliminary investigation stage on 11 January 2020.

On the date of extraction, almost 22% of all cases had already been dismissed. The next section, 'Grounds for dismissal', will go into more detail about the reasons for these 'no further actions'.

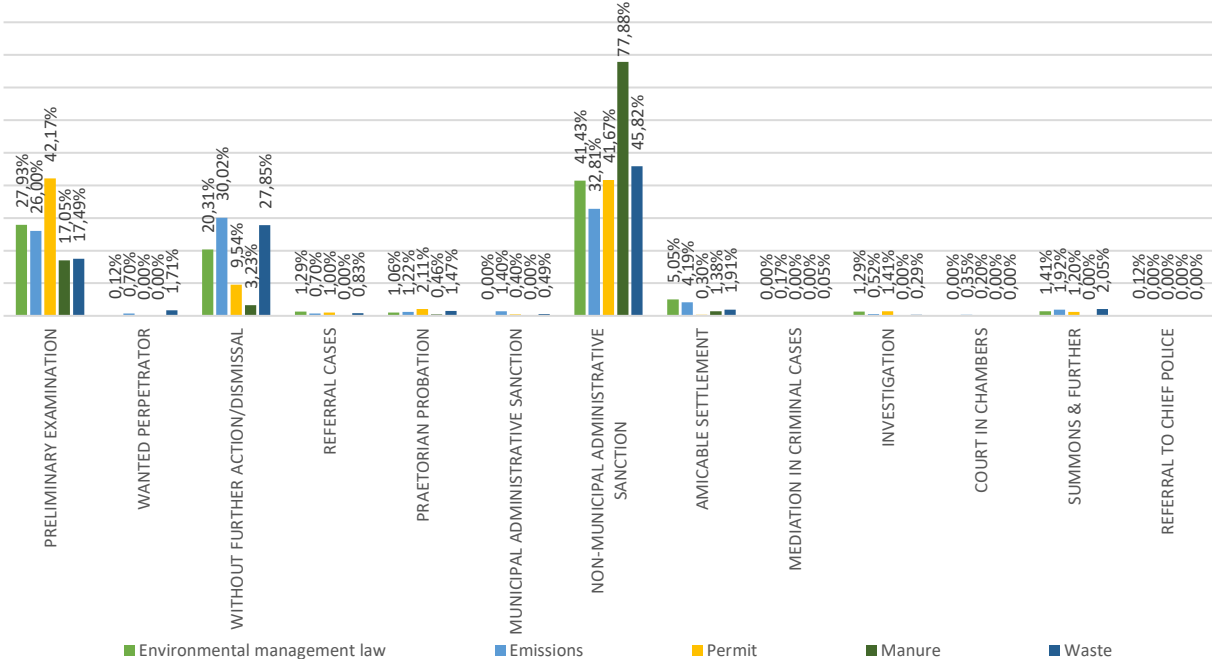
42 cases were referred cases on the extraction date. These are cases that were referred to another public prosecutor's office or another (judicial) body. In certain divisions, this progress state was also assigned to cases that were submitted to municipalities or the regional sanctioning entity with the intention of imposing an administrative sanction.

The number of cases in which an amicable settlement had already been proposed on the extraction date was 2.39% of the total number of Environmental Enforcement cases in 2019. This concerned 112 cases. In addition, 77 of all cases in 2019 had been subpoenaed on the extraction date.

The public prosecutor's offices can submit cases to the regional sanctioning entity with the intention of imposing an administrative fine. This information is shown in the table above with the progress state 'non-municipal administrative sanction'. In 2019, 2,063 cases had already been transferred to the competent public authority on the extraction date with a view to imposing an administrative sanction, which means that no less than 44% of the total number of 'Environmental Enforcement' cases recorded on the extraction date had already been submitted for the imposition of an administrative sanction by the regional sanctioning entity.

The following graph shows an overview per progress state of the proportion of types of indictment codes (waste, manure, permit, emissions and environmental management) in 2019. The cases involving waste, manure, permit, 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).

The following graph shows the progress state of the cases per indictment code on the extraction date. The progress states (preliminary investigation, no further action, referral, amicable settlement, mediation in criminal cases, investigation, summons and further, unknown/error) were measured against a reference value set at one hundred, which is a certain indictment code type.



Graph 13 Progress states as of 11 January 2020 of the 'Environmental Enforcement' cases recorded by the criminal prosecution offices in the Flemish Region in 2019 broken down by indictment type (waste, manure, permit, emissions and environmental management) - Source: database of the Board of Procurators General - statistical analysts

The graph above shows that, in 2019, 2.05% of the total number of cases relating to waste on 11 January 2020 had already been subpoenaed. In addition, almost 28% of the cases concerning waste had been dismissed without further action.

With regard to the cases concerning manure in 2019, it can be noted that on 11 January 2020 the majority, i.e. almost 78%, had been transferred to the authorised administration with the intention of imposing a non-municipal administrative sanction and 17% of these cases were still under preliminary investigation.

For cases relating to permits, it can be observed that 10 percent of these cases had already been dismissed without further action on the extraction date. The number of cases still under preliminary investigation on the extraction date was 42%. Furthermore, almost 42% of these cases had already been transferred to the authorised administration on the extraction date, with a view to imposing a non-municipal administrative sanction.

For cases relating to emissions, an amicable settlement had been proposed on the extraction date in more than 4% of the cases. In addition, 30% of these cases relating to emissions had already been dismissed without further action on the extraction date.

We observe for environmental management cases that more than 1/5 were dismissed on 11 January 2020 without further action. In addition, nearly 28% of these cases were still under preliminary investigation.



### 4.1.3 Grounds for dismissal

In the previous section on the progress state of 'Environmental Enforcement' cases, it was established that, on 11 January 2020, 21.71% had already been dismissed without further action by the public prosecutor's offices in the Flemish Region. However, for the preparation of this environmental enforcement report, figures were also made available to the Flemish High Enforcement Council for Spatial Planning and Environment that provide further insight into the cases that were dismissed without further action.

Indeed, in cases where no further action has been taken, it is important to consider the grounds for dismissal. The Criminal Procedure Code, article 28 c para. 1, introduced by the Act of 12 March 1998, imposes on the Public Prosecutor the obligation to motivate their decisions. The public prosecutor's offices have a detailed list of grounds for 'no further action' which have been standardised throughout the country and 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.

The following classification was used for these figures:

- ▶ Dismissal for reasons of expediency:
  - limited social impact
  - situation regularised
  - crime of a relational nature
  - minor disadvantage
  - reasonable term exceeded
  - absence of criminal record
  - accidental cause
  - imbalance between criminal proceedings and social disruption
  - victim's attitude
  - victim compensation
  - insufficient investigation resources
  - other priorities
  - priority to civil settlement
- ▶ Technical dismissal:
  - no crime
  - insufficient evidence
  - limitation
  - decease of the perpetrator
  - final decision
  - ne bis in idem
  - perpetrator(s) unknown

The following table shows the type of 'no further action' (dismissal of opportunity and technical dismissal) reported by the various public prosecutor's offices in the Flemish Region with regard to 'Environmental Enforcement' cases that were in the 'without further action' progress state on 11 January 2020.

|   | Dismissal of a technical nature |              | Dismissal for reasons of opportunity |              | Total        |            |
|---|---------------------------------|--------------|--------------------------------------|--------------|--------------|------------|
|   | n                               | %            | n                                    | %            | n            | %          |
| <b>DISTRICT OF ANTWERP</b>                                      | 97                              | 59.88        | 65                                   | 40.12        | 162          | 100        |
| Antwerp Public Prosecutor's Office – Antwerp division           | 96                              | 60           | 64                                   | 40           | 160          | 100        |
| Antwerp Public Prosecutor's Office – Mechelen division          | 1                               | 50           | 1                                    | 50           | 2            | 100        |
| <b>DISTRICT OF LIMBURG</b>                                      | 74                              | 51.75        | 69                                   | 48.25        | 143          | 100        |
| Limburg Public Prosecutor's Office – Hasselt division           | 35                              | 47.95        | 38                                   | 52.05        | 73           | 100        |
| Limburg Public Prosecutor's Office – Tongeren division          | 39                              | 55.71        | 31                                   | 44.29        | 70           | 100        |
| <b>DISTRICT OF BRUSSELS</b>                                     | 66                              | 53.66        | 57                                   | 46.34        | 123          | 100        |
| Halle-Vilvoorde Public Prosecutor's Office                      | 66                              | 53.66        | 57                                   | 46.34        | 123          | 100        |
| <b>DISTRICT OF LEUVEN</b>                                       | 45                              | 59.21        | 31                                   | 40.79        | 76           | 100        |
| <b>DISTRICT OF EAST FLANDERS</b>                                | 254                             | 78.64        | 69                                   | 21.36        | 323          | 100        |
| East Flanders Public Prosecutor's Office – Ghent division       | 175                             | 76.42        | 54                                   | 23.58        | 229          | 100        |
| East Flanders Public Prosecutor's Office – Dendermonde division | 75                              | 84.27        | 14                                   | 15.73        | 89           | 100        |
| East Flanders Public Prosecutor's Office – Oudenaarde division  | 4                               | 80           | 1                                    | 20           | 5            | 100        |
| <b>DISTRICT OF WEST FLANDERS</b>                                | 135                             | 71.05        | 55                                   | 28.95        | 190          | 100        |
| West Flanders Public Prosecutor's Office – Bruges division      | 5                               | 71.43        | 2                                    | 28.57        | 7            | 100        |
| West Flanders Public Prosecutor's Office – Kortrijk division    | 129                             | 71.67        | 51                                   | 28.33        | 180          | 100        |
| West Flanders Public Prosecutor's Office – Ypres division       | .                               | .            | 2                                    | 100          | 2            | 100        |
| West Flanders Public Prosecutor's Office – Veurne division      | 1                               | 100          | .                                    | .            | 1            | 100        |
| <b>Total</b>  | <b>671</b>                      | <b>65.98</b> | <b>346</b>                           | <b>34.02</b> | <b>1,017</b> | <b>100</b> |

Table 40 Reasons for dismissing 'Environmental Enforcement' cases, received in 2019, in which no further action was taken on 11 January 2020, whether or not by merging with a parent case, by public prosecutor's office (and division) Source: database of the Board of Procurators General – statistical analysts

The table shows that 1,017 out of a total of 4,685 'Environmental Enforcement' cases received by public prosecutors on 11 January 2020 had already been dismissed. This corresponds to nearly 22% of the total number of 'Environmental Enforcement' cases.

Of the 1,017 cases, 34.02% were dismissed for reasons of expediency and 65.98% for technical reasons.

The following table shows the grounds for dismissal per section of the indictment codes (waste, manure, permit, emissions and environmental management) for 2019. This makes it possible, among other things, to form a picture of which types of cases are dismissed for which reasons.

|  | Environmental management law |            | Air, water, soil, noise (emissions) |            | Permit    |            | Manure   |            | Waste      |            | Total        |            |
|--|------------------------------|------------|-------------------------------------|------------|-----------|------------|----------|------------|------------|------------|--------------|------------|
|  | n                            | %          | n                                   | %          | n         | %          | n        | %          | n          | %          | n            | %          |
| Dismissal of a technical nature                                    | 102                          | 58.96      | 100                                 | 58.14      | 48        | 50.53      | 3        | 42.86      | 418        | 73.33      | 671          | 65.98      |
| no crime   | 18                           | 10.4       | 19                                  | 11.05      | 9         | 9.47       | .        | .          | 32         | 5.61       | 78           | 7.67       |
| insufficient evidence  | 37                           | 21.39      | 37                                  | 21.51      | 27        | 28.42      | 2        | 28.57      | 304        | 53.33      | 407          | 40.02      |
| criminal proceedings dropped                                       | 2                            | 1.16       | 2                                   | 1.16       | 1         | 1.05       | .        | .          | 3          | 0.53       | 8            | 0.79       |
| limitation   | 1                            | 0.58       | .                                   | .          | 1         | 1.05       | .        | .          | .          | .          | 2            | 0.2        |
| decease of the perpetrator   | 1                            | 0.58       | 2                                   | 1.16       | .         | .          | .        | .          | 3          | 0.53       | 6            | 0.59       |
| inadmissibility of criminal proceedings                            | 1                            | 0.58       | 6                                   | 3.49       | 7         | 7.37       | .        | .          | 7          | 1.23       | 21           | 2.06       |
| final decision   | 1                            | 0.58       | 6                                   | 3.49       | 7         | 7.37       | .        | .          | 6          | 1.05       | 20           | 1.97       |
| ne bis in idem   | .                            | .          | .                                   | .          | .         | .          | .        | .          | 1          | 0.18       | 1            | 0.1        |
| perpetrator(s) unknown   | 44                           | 25.43      | 36                                  | 20.93      | 4         | 4.21       | 1        | 14.29      | 72         | 12.63      | 157          | 15.44      |
| Dismissal for reasons of expediency                                | 70                           | 40.46      | 72                                  | 41.86      | 47        | 49.47      | 4        | 57.14      | 152        | 26.67      | 345          | 33.92      |
| grounds specific to the nature of the facts                        | 22                           | 12.72      | 17                                  | 9.88       | 23        | 24.21      | 2        | 28.57      | 51         | 8.95       | 115          | 11.31      |
| limited social impact  | 7                            | 4.05       | 5                                   | 2.91       | 3         | 3.16       | 1        | 14.29      | 3          | 0.53       | 19           | 1.87       |
| situation regularised  | 14                           | 8.09       | 11                                  | 6.4        | 19        | 20         | 1        | 14.29      | 44         | 7.72       | 89           | 8.75       |
| minor disadvantage   | 1                            | 0.58       | .                                   | .          | 1         | 1.05       | .        | .          | 3          | 0.53       | 5            | 0.49       |
| reasonable term exceeded   | .                            | .          | 1                                   | 0.58       | .         | .          | .        | .          | 1          | 0.18       | 2            | 0.2        |
| grounds specific to the person of the perpetrator or of the victim | 32                           | 18.5       | 34                                  | 19.77      | 11        | 11.58      | 2        | 28.57      | 61         | 10.7       | 140          | 13.77      |
| absence of criminal record   | 15                           | 8.67       | 7                                   | 4.07       | 3         | 3.16       | 1        | 14.29      | 17         | 2.98       | 43           | 4.23       |
| accidental cause   | 5                            | 2.89       | 21                                  | 12.21      | 8         | 8.42       | .        | .          | 18         | 3.16       | 52           | 5.11       |
| young age  | .                            | .          | .                                   | .          | .         | .          | .        | .          | 2          | 0.35       | 2            | 0.2        |
| imbalance between criminal proceedings and social disruption       | 11                           | 6.36       | 1                                   | 0.58       | .         | .          | 1        | 14.29      | 16         | 2.81       | 29           | 2.85       |
| victim compensation  | 1                            | 0.58       | 5                                   | 2.91       | .         | .          | .        | .          | 8          | 1.4        | 14           | 1.38       |
| policy   | 16                           | 9.25       | 21                                  | 12.21      | 13        | 13.68      | .        | .          | 40         | 7.02       | 90           | 8.85       |
| insufficient investigation resources                               | 5                            | 2.89       | 1                                   | 0.58       | 2         | 2.11       | .        | .          | 16         | 2.81       | 24           | 2.36       |
| other priorities   | 6                            | 3.47       | 7                                   | 4.07       | 8         | 8.42       | .        | .          | 8          | 1.4        | 29           | 2.85       |
| priority to civil settlement                                       | 5                            | 2.89       | 13                                  | 7.56       | 3         | 3.16       | .        | .          | 16         | 2.81       | 37           | 3.64       |
| priority to the disciplinary processing                            | 1                            | 0.58       | .                                   | .          | .         | .          | .        | .          | .          | .          | 1            | 0.1        |
| <b>Total</b>   | <b>173</b>                   | <b>100</b> | <b>172</b>                          | <b>100</b> | <b>95</b> | <b>100</b> | <b>7</b> | <b>100</b> | <b>570</b> | <b>100</b> | <b>1,017</b> | <b>100</b> |

Table 41 Grounds for dismissing the 'environmental enforcement' cases in which no further action was taken on 11 January 2020, received between 01 January 2019 and 31 December 2019, whether or not by merging with a parent case, per type of indictment code (n & column%) Source: database of the Board of Procurators General - statistical analysts

As mentioned above, almost 22% of all 'Environmental Enforcement' cases recorded by the criminal prosecution offices in the Flemish Region in 2019, had already been dismissed on the extraction date. This represents more than 1/5 of the total number of cases recorded in 2019. The majority, namely

671 cases, were dismissed for technical reasons. More than 60% of these 671 cases were dismissed because of insufficient evidence; 23% because the perpetrators were unknown, and 12% because no crime had taken place.

Several grounds can be found for dismissal due to expediency. A ground specific to the nature of the facts may, for example, be the limited social impact of the case, but also, for example, the fact that the situation was regularised, that the disadvantage was insufficient, or because the reasonable period had been exceeded. A total of 115 cases were dismissed in 2019 for reasons peculiar to the nature of the facts, 89 of them because the situation had been regularised. In addition, 140 cases were dismissed on grounds specific to the offender's person. This may include, but is not limited to, lack of a criminal record, accidental cause or imbalance between criminal proceedings and social disruption, victim's attitude or compensation to the victim. In addition, on 11 January 2020, 90 cases were dismissed for reasons of expediency related to the policy. This may be due to a lack of investigative capacity, or because priority was given to civil proceedings or disciplinary proceedings, or because other priorities were set within the public prosecutor's office. A total of 345, or 7.36% of the total number of 'Environmental Enforcement' cases recorded by the criminal public prosecutors in the Flemish Region in 2019, were already dismissed on the extraction date, on the grounds of expediency.

If we look at the various themes, we can see that 173 cases relating to environmental management law were already dismissed on the extraction date. This represents 20% of the total number of recorded cases concerning environmental management law. It can be observed that almost 59% were dismissed for technical reasons, mainly because there was insufficient evidence, and 41% for reasons of expediency, mainly for reasons specific to the offender or the victim.

With regard to cases relating to emissions, we can see that approximately 58% of the total of 172 dismissed cases were dismissed for technical reasons. More specifically, we can conclude that almost 22% of the cases were dismissed because there was insufficient evidence.

In total, 95 of the 996 cases relating to permits were already dismissed. This equates to 9.5%. With regard to dismissals in permit cases, more than 28% were dismissed because there was insufficient evidence. In addition, 24% of cases were dismissed on grounds specific to the nature of the facts.

Of the 7 manure cases already dismissed on the extraction date, 4 of the cases were dismissed for reasons of opportunity and 3 cases for technical reasons.

On the date of extraction, 28% of the total number of recorded cases relating to waste had already been dismissed. More than half, i.e. 53.3% of these dismissed cases were closed without further action because there was insufficient evidence.

## 4.2 EVALUATION OF THE SANCTIONING POLICY PURSUED BY THE REGIONAL SANCTIONING ENTITY

DABM stipulates that the exclusive and alternative administrative fines are imposed by the regional entity designated by the Government of Flanders, namely the regional sanctioning entity. In 2012, the administrative transaction was introduced in addition to the exclusive and the alternative administrative fine. This administrative transaction can be considered as a kind of 'amicable settlement' that the regional sanctioning entity can propose for certain cases (both environmental crimes and environmental offences). Given the role of this body, the regional sanctioning entity was also surveyed about its environmental enforcement activities for the Environmental Enforcement Report 2019.

### 4.2.1 Processing of environmental crimes

In the context of the processing of environmental crimes by the regional sanctioning entity in 2019, they were asked how many official reports the regional sanctioning entity received between 01 January 2019 and 31 December 2019 and from which public prosecutor's office. This is presented in the table below. A distinction is also made between the number of priority and non-priority official reports. Based on the 'Priority Memorandum on prosecution policy for environmental law in the Flemish Region in 2013', the reporting offices are responsible for applying this classification to their official report.

|  | Priority ORs | Non-priority ORs | Total        |
|--|--------------|------------------|--------------|
| East Flanders Public Prosecutor's Office   | 34           | 750              | 784          |
| West Flanders Public Prosecutor's Office   | 20           | 549              | 569          |
| Antwerp Public Prosecutor's Office         | 13           | 373              | 386          |
| Limburg Public Prosecutor's Office         | 6            | 217              | 223          |
| Leuven public prosecutor's office          | 8            | 78               | 86           |
| Halle-Vilvoorde Public Prosecutor's Office | 3            | 204              | 207          |
| <b>Total</b>                               | <b>84</b>    | <b>2,171</b>     | <b>2,255</b> |

Table 42 Official reports received by the regional sanctioning entity of the public prosecutor's offices in the Flemish Region in 2019

The table shows that the regional sanctioning entity received a total of 2,255 official reports in 2019 from the criminal divisions of the public prosecution offices in the Flemish Region with a view to imposing an alternative administrative fine<sup>46</sup>.

Almost all of these official reports, i.e. 96%, were non-priority official reports. Moreover, we see that more than 1/3 of the official reports that were submitted to the regional sanctioning entity came from the public prosecutor's office of East Flanders.

<sup>46</sup> This is the number of official reports received by the regional sanctioning entity in 2019. It should be taken into account that some of these official reports were drawn up in 2018 and possibly also in 2017, and the Public Prosecutor decided in 2019 to transfer these cases to the regional sanctioning entity with a view of imposing an administrative fine.

The following table not only shows the number of cases received by the regional sanctioning entity from the public prosecutor's offices in 2019, but also the number of 'Environmental Enforcement' cases recorded by the public prosecutor's offices in the Flemish Region in 2019. This makes it possible to calculate the percentage of cases sent to the regional sanctioning entity by each public prosecutor's office. It should be noted that not all official reports recorded by public prosecutors in 2019 were also dealt with in 2019. The public prosecutor's office has a period of 180 days (extendible once by 180 days) within which to decide whether or not to send the case to the regional sanctioning entity.

|  | ORs received by the regional entity of the public prosecutor's offices | Number of 'environmental enforcement' cases registered by the criminal prosecutor's office | % share of the ORs forwarded to the regional entity |
|--|--|--|---|
| East Flanders Public Prosecutor's Office   | 784  | 1,449  | 54.11%  |
| West Flanders Public Prosecutor's Office   | 569  | 1,077  | 52.83%  |
| Antwerp Public Prosecutor's Office         | 386  | 908  | 42.51%  |
| Limburg Public Prosecutor's Office         | 223  | 492  | 45.32%  |
| Leuven public prosecutor's office          | 86   | 255  | 33.73%  |
| Halle-Vilvoorde Public Prosecutor's Office | 207  | 507  | 40.83%  |
| <b>Total</b>                               | <b>2 255</b>   | <b>4 685</b>   | <b>48.13%</b>                                       |

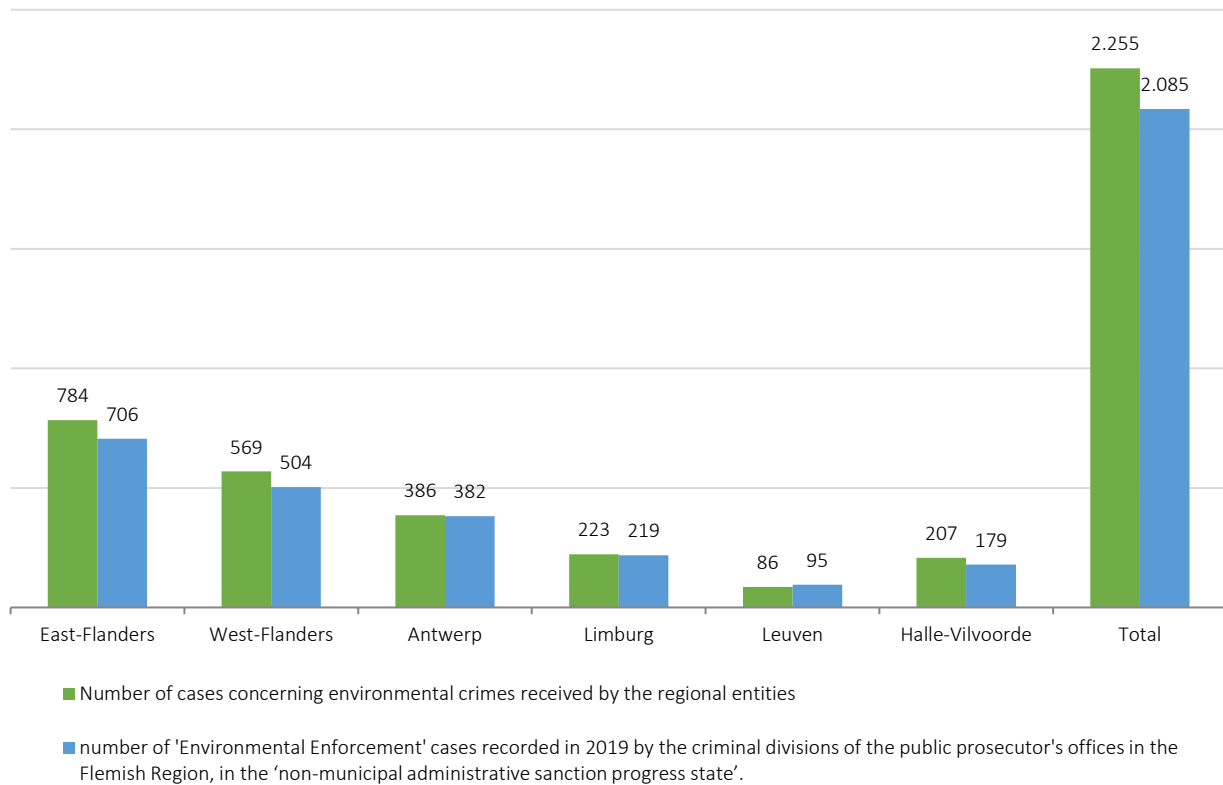
*Table 43 Percentage share of official reports received by the public prosecutor's offices in the Flemish Region in 2019, sent to the regional sanctioning entity*

Based on the data, we can conclude that in 2019 the regional sanctioning entity received an average of 48.13% of the total number of 'Environmental Enforcement' cases that the public prosecutor's offices recorded in 2019. The public prosecutor's office in West Flanders recorded a total of 1,077 'Environmental Enforcement' cases in 2019. The regional sanctioning entity received a total of 569 cases from the public prosecutor's office in West Flanders. This means that approximately 53% of the cases recorded by the public prosecutor's office of West Flanders on the extraction date, 11 January 2020, had already been submitted to the regional sanctioning entity with a view to imposing an alternative administrative fine. This ratio is 54 % for the public prosecutor's office in East Flanders, 42.51% for the public prosecutor's office in Antwerp, and 45.32% for the public prosecutor's office in Limburg. The table shows a ratio of 33.73% for the public prosecutor's offices in Leuven and 40.83% for Halle-Vilvoorde.

Generally speaking for 2019, the regional sanctioning entity always received at least 1/3 of the total number of 'Environmental Enforcement' cases recorded by public prosecutor's offices with a view to imposing an alternative administrative fine.

## NOTE

The data on the number of cases delivered by the public prosecutor's offices and received by the regional sanctioning entity are based on the figures that the Flemish High Enforcement Council for Spatial Planning and Environment received from the regional sanctioning entity. On the basis of the figures that the VHRM received from the public prosecutors, discrepancies 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.



*Graph 14 The number of cases concerning environmental crimes received by the regional entities and the number of 'Environmental Enforcement' cases recorded in 2019 by the criminal divisions of the public prosecutor's offices in the Flemish Region, in the 'non-municipal administrative sanction progress state'.*

The graph above shows that the regional sanctioning entity received 170 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 the regional sanctioning entity 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 the regional sanctioning entity.

This imbalance can be observed for all public prosecutor's offices except Leuven. For example, 706 cases were in the 'non-municipal administrative sanction' progress state at the East Flanders public prosecutor's office on the extraction date, while the regional sanctioning entity stated that it had received 784 cases from this public prosecutor's office in 2019. For the public prosecutor's office in West Flanders, this ratio is 504 cases in the 'non-municipal administrative sanction' progress state and 569 cases received by the regional sanctioning entity. For the public prosecutor's office in Antwerp, this ratio is 382 cases in the 'non-municipal administrative sanction' progress state and 386

cases received by the regional sanctioning entity from this public prosecutor's office; the ratio is 219 cases for the public prosecutor's office compared to 223 cases received by the regional sanctioning entity in Limburg in 2019; the ratio for Halle-Vilvoorde was 179 cases compared to 207 received by the regional entity.

Considering the noise in the collected data, the analysis of this component is based on the figures that the Flemish High Enforcement Council for Spatial Planning and Environment received from the regional sanctioning entity.

In line with the previous environmental enforcement reports, more specific data are included on the origin and the theme of the cases that were submitted to the regional sanctioning entity. The following table shows the number of cases that the regional sanctioning entity received from the public prosecutor's offices, drawn up by the various enforcement actors.

| Enforcement actor   | OR received by the regional entity in 2019 |                |              |                |
|---|--|----------------|--------------|----------------|
|   | Priority                                   | %              | Non-priority | %              |
| Agency for Roads and Traffic  | 0  | 0.00%          | 192          | 8.84%          |
| Federal police  | 0  | 0.00%          | 29           | 1.34%          |
| Local police  | 2  | 2.38%          | 961          | 44.27%         |
| Municipal supervisors   | 6  | 7.14%          | 136          | 6.26%          |
| Inter-municipal supervisors   | 1  | 1.19%          | 17           | 0.78%          |
| Provincial supervisors  | 0  | 0.00%          | 1            | 0.05%          |
| Enforcement division - Environmental Inspection   | 22   | 26.19%         | 380          | 17.50%         |
| Territorial Development, Environmental Planning and Projects division of the Department of Environment and Spatial Development (formerly LNE - AMV)   | 0  | 0.00%          | 11           | 0.51%          |
| ANB (Agency for Nature and Forests)   | 4  | 4.76%          | 247          | 11.38%         |
| Special constables  | 0  | 0.00%          | 75           | 3.45%          |
| OVAM  | 0  | 0.00%          | 6            | 0.28%          |
| VLM (Flemish Land Agency)   | 49   | 58.33%         | 116          | 5.34%          |
| VMM (Flemish Environmental Agency)  | 0  | 0.00%          | 0            | 0.00%          |
| Territorial Development, Environmental Planning and Projects division of the Department of Environment and Spatial Development (formerly LNE - ALBON) | 0  | 0.00%          | 0            | 0.00%          |
| De Scheepvaart nv   | 0  | 0.00%          | 0            | 0.00%          |
| Federal Public Service Mobility and Transportation  | 0  | 0.00%          | 0            | 0.00%          |
| <b>Total</b>  | <b>84</b>                                  | <b>100.00%</b> | <b>2,171</b> | <b>100.00%</b> |

Table 44 The percentage share of official reports received by the regional entity in 2019, by enforcement body

Almost 43% of the official reports, priority and non-priority, received by the regional sanctioning entity in 2019, were drawn up by the local police. In absolute figures, 963 of official reports were involved. In addition, the table shows that 11% of the official reports received were drawn up by the Agency for Nature and Forests and 18% by the supervisors of the Enforcement division - Environmental Inspection. Most of the priority official reports were drawn up by VLM, i.e. 58% of the priority official reports received by the regional entity were drawn up by VLM.



The following table gives an overview of the themes of the cases received by the regional sanctioning entity in 2019. The themes are the same as those used in the evaluation of the sanctioning policy implemented by the public prosecutor’s offices.

| Environmental themes       | OR received by the regional entity in 2019 |                |              |                |
|----------------------------|--|----------------|--------------|----------------|
|                            | Priority                                   |                | Non-priority |                |
|                            | n  | %              | n            | %              |
| Environmental management   | 3  | 3.57%          | 346          | 15.94%         |
| Air, Water, Soil and Noise | 18   | 21.43%         | 318          | 14.65%         |
| Permit                     | 12   | 14.29%         | 426          | 19.62%         |
| Manure                     | 49   | 58.33%         | 122          | 5.62%          |
| Waste                      | 2  | 2.38%          | 959          | 44.17%         |
| <b>Total</b>               | <b>84</b>                                  | <b>100.00%</b> | <b>2 171</b> | <b>100.00%</b> |

Table 45 The percentage share of official reports received by the regional entity in 2019, by environmental theme

The table shows that 42.5% of the cases, priority and non-priority, concerned waste. In addition, 15% of the cases received by the regional sanctioning entity in 2019 were related to environmental management, 15% to emissions, 19% to permits, and 7.5% to manure.

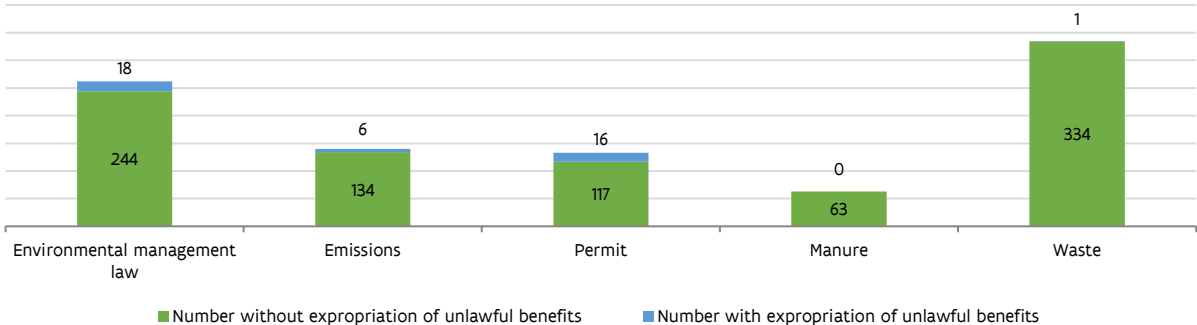
The following table gives an overview of the number and type of decisions that the regional sanctioning entity took in 2019 with regard to the alternative administrative fine. As mentioned earlier, since September 2012 the regional sanctioning entity can propose an administrative transaction for certain environmental crimes. 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, if the offender does not wish to accept the administrative transaction proposal, the regional sanctioning entity resumes the procedure for imposing an alternative administrative fine. Since 2019, the regional sanctioning entity can also impose a fine with (partial) deferment.

|  | Priority cases | Non-priority cases | Total |
|--|----------------|--------------------|-------|
| ORs received by the regional entity of the public prosecutor’s offices   | 84             | 2,171              | 2255  |
| Processing/completion of cases involving alternative administrative fines  | 158            | 2047               | 2205  |
| Decision did NOT impose a fine   | 17             | 170                | 187   |
| Decision to impose a fine  | 92             | 837                | 929   |
| Decision imposed a fine with (partial) deferment (in accordance with article 16,4,29, § 2 DABM - new provision since 12/07/2019) | 0              | 4                  | 4     |
| Decision imposed an administrative transaction (and it was paid)   | 49             | 1036               | 1085  |

Table 46 Decisions taken in the context of alternative administrative fines by the regional entity

For 2019, we see that the regional sanctioning entity received 2,255 cases and processed 2,205 cases. 929 alternative administrative fines were imposed and a fine with (partial) deferment was imposed in 4 cases. In 187 cases it was decided not to impose a fine. In addition, 1,085 administrative transactions were presented and paid. The 929 decisions that involved a fine also included the fines that were imposed after the administrative transaction proposal was rejected.

The graph below shows the framework within which the alternative administrative fines were imposed in 2019. It also indicates whether these alternative administrative fines were linked to an expropriation of unlawful material benefits.



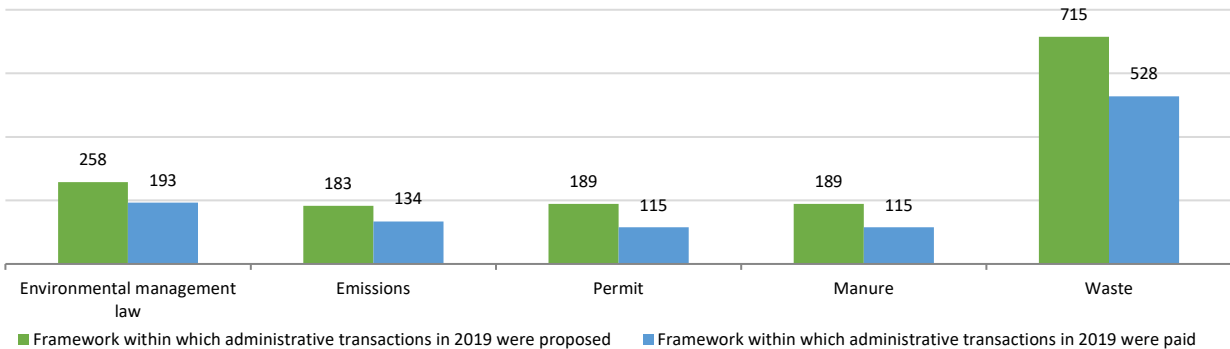
Graph 15 Framework within which alternative administrative fines were imposed by the regional entity in 2019, without and with expropriation of unlawful material benefits

For 36% of the 933 decisions imposing fines taken in 2019 (including 4 with (partial) deferment), the official report related to waste. Approximately 28% were related to environmental management. 15% of the alternative fines in 2019 related to emissions and 7% to manure. In addition, 14% of the decisions imposing fines related to permit cases.

The graph also shows that an expropriation of unlawful material benefits was imposed in 41 out of a total of 933 alternative administrative fines given in 2019. This equates to 4.41%. Of the 262 decisions imposing fines in relation to environmental management, 18 alternative fines were accompanied by an expropriation of unlawful material benefits. In the case of fines in connection with emissions, 6 out of 140 fines were linked to an expropriation of unlawful material benefits. In terms of percentages, the expropriation of unlawful material benefits generally accompanied fines related to permits, namely 12.12% of the total number of fines related to permits. On the other hand, we see that not a single alternative administrative manure fine imposed in 2019 was subject to an expropriation of unlawful material benefits.

The regional sanctioning entity reports that the total collection rate for the administrative fines was 84.19% in 2019.

The graph below shows the framework within which the administrative transactions were proposed in 2019 and the framework within which the administrative transactions were paid in 2019.<sup>47</sup>



Graph 16 Framework within which administrative transactions in 2019 were proposed and paid, by environmental theme

<sup>47</sup> Some of the administrative transactions proposed in 2019 will be paid in 2020. Moreover, 2019 handled administrative transactions that were proposed in 2018. The matching is therefore not 100% given that the payment term is 3 months.

The graph shows that the regional sanctioning entity proposed a total of 1,534 administrative transactions in 2019 and that for almost half of these proposals, i.e. 47%, the case was related to waste. In addition, for 17% of the proposals, the case related to environmental management and approximately 12% of the cases to manure, permits and emissions.

Furthermore, the graph also shows that, in 2019, a total of 1,085 payment proposals were accepted as part of the administrative transaction procedure. This represents more than 70%. Given that the payment term for an administrative transaction is 3 months, some administrative transactions proposed in 2018 were only paid in 2019 and some administrative transactions proposed in 2019 will be paid in 2020. So given this payment term, the graph does not allow a one-to-one relationship to be established between the proposals and the administrative transactions actually paid. The regional sanctioning entity reports that the total collection rate for the proposed administrative transactions was almost 88% in 2019.

**4.2.2 Processing environmental offences**

In the context of dealing with environmental infringements, the regional sanctioning entity was asked to indicate how many incident reports it had received in 2019, by whom they were drawn up, and for what reason these incident reports were drawn up and fined.

The regional sanctioning entity reported that a total of 314 incident reports were received in 2019 in relation to identified environmental offences. 86% of these incident reports were drawn up by regional supervisors. In fact, 196 were transferred to the regional sanctioning entity by the Agency for Nature and Forests, 73 by OVAM, 1 by the Enforcement division - Environmental Inspection and 1 by the Flemish Land Agency. In addition, 1 incident report was drawn up by a municipal supervisor and 42 by Local police supervisors.

The regional sanctioning entity was asked to indicate the framework in which the incident reports were drawn up in 2019. The following table shows this.

|                          |            |
|--------------------------|------------|
| Environmental management | 230        |
| Emissions                | 23         |
| Permits                  | 6          |
| Manure                   | 0          |
| Waste                    | 55         |
| <b>Total</b>             | <b>314</b> |

*Table 47 Incident reports received by the regional entity, per subject in 2019*

The table shows that 73% of the total number of incident reports dealt with environmental management and 17.5% with waste. In addition, 2% of the 314 received incident reports permits and 7.5% concerned emissions.

The regional sanctioning entity was asked to indicate which decisions were taken in 2019 with regard to incident reports received. The table below summarises the decisions taken in 2019 in the context of exclusive administrative fines.

|  |     |
|--|-----|
| Incident Report received by the regional entity  | 314 |
| Decision taken in the context of Exclusive administrative fines  | 237 |
| Decision not to impose a fine  | 9   |
| Decision to impose a fine  | 79  |
| Decision imposed a fine with (partial) deferment (in accordance with article 16.4.29, § 2 DABM - new provision since 12/07/2019) | 4   |
| Decision imposed an administrative transaction (and it was paid)   | 145 |

Table 48 Decisions taken in the context of exclusive administrative fines by the regional entity

The table shows that, in 2019, the regional sanctioning entity received a total of 314 incident reports and took 237 decisions on identified environmental offences. In 35% of these decisions an exclusive administrative fine was imposed (with or without deferment), while in six cases it was decided not to impose a fine. In addition, 145 administrative transactions were presented and paid. The 83 decisions that involved a fine also included the fines that were imposed after the administrative transaction proposal was rejected.

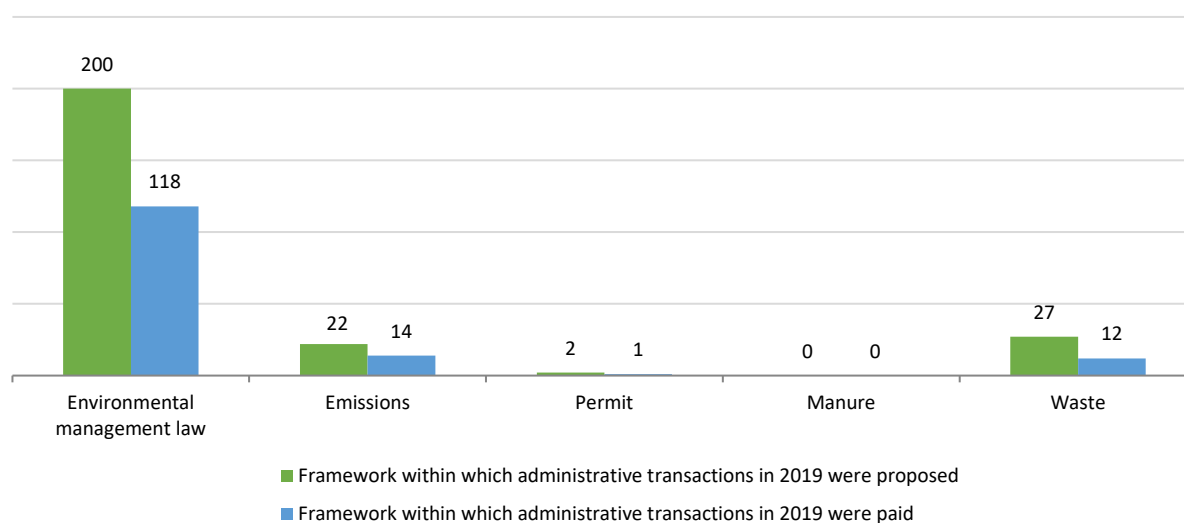
The following table shows the framework within which the fines were imposed by the regional sanctioning entity in 2019.

| Framework within which an exclusive administrative fine was imposed: | Number of cases |
|--|-----------------|
| Environmental management   | 60              |
| Emissions  | 5               |
| Permits  | 7               |
| Manure   | 0               |
| Waste  | 11              |

Table 49 Framework within which an exclusive administrative fine was imposed in 2019

The table shows that in 72% of the decisions where an exclusive administrative fine was imposed, the case related to environmental management, 13% related to waste, 8% to permits and 6% to emissions. In 2019, no exclusive fines were imposed for manure.

The following graph shows in which framework the administrative transaction was proposed in 2019.



Graph 17 Framework within which administrative transactions in 2019 were proposed and paid, by environmental theme

The graph above shows that the regional sanctioning entity proposed a total of 251 administrative transactions in 2019, and that 80% of these proposals related to environmental management. In addition, for 11% of the proposals, the case related to waste, 1% to permits and 9% of the cases related to emissions.

The graph also shows that, in 2019, a total of 145 payment proposals were accepted as part of the administrative transaction procedure. This equates to 58%. Given that the payment term for an administrative transaction is 3 months, some administrative transactions proposed in 2018 but were only paid in 2019. So given this payment term, the graph does not allow a one-to-one relationship to be established between the proposals and the administrative transactions actually paid.

### 4.3 EVALUATION OF RULINGS BY THE ENFORCEMENT COURT

The Enforcement Court (*formerly the Environmental Enforcement Court*<sup>48</sup>) is an independent administrative court that was established in accordance with article 16.4.19 of DABM. It rules on appeals against decisions of the regional sanctioning entity imposing an alternative or exclusive administrative fine, whether or not accompanied by an expropriation of unlawful material benefits, which were taken after an environmental infringement or an environmental offence was established.

The decisions that the Enforcement Court can take are stated in Article 16.4.19(3) of the Environmental Enforcement Decree:

- ▶ the Enforcement Court is not competent to hear the appeal, in which case it decides to dismiss the appeal;
- ▶ the appeal is inadmissible. In this case too, the Enforcement Court decides to dismiss the appeal without being able to proceed to examine the merits of the case;
- ▶ the appeal is unfounded. In this case, the Enforcement Council also decides to dismiss the appeal, but after the merits of the case have been examined. That decision confirms the contested decision imposing a fine on the appeal aspect;
- ▶ the appeal is justified. In this case, the Enforcement Court annuls the contested decision in whole or in part, in which case (as a rule) the regional sanctioning entity can take a new decision, except in those cases in which it is not or no longer competent. However, the Enforcement Court itself can also take a decision on the amount of the fine and, where applicable, the expropriation of unlawful material benefits, and determine that its ruling on this matter replaces the annulled decision.

The Enforcement Court was also surveyed by the VHRM about its activities in 2019. They were asked about the number of appeals received against fine decisions by the regional sanctioning entity in the context of both environmental crimes and environmental offences. They were also asked about how these appeals were dealt with.

The table below shows the activities of the Enforcement Court in 2019 related to the appeals lodged against fine decisions of the regional sanctioning entity.

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<sup>48</sup>With the entry into force of the regulations on the enforcement of the Integrated Environmental Permit, the Environmental Enforcement Court was renamed the 'Enforcement Court' on 1 March 2018.

| <b>APPEALS</b>   | <b>Environmental crimes</b> | <b>Environmental offences</b> | <b>Total</b> |
|------------------|-----------------------------|-------------------------------|--------------|
| Received in 2019 | 61                          | 7                             | 68           |

| <b>JUDGEMENTS</b>  | <b>Environmental crimes</b> | <b>Environmental offences</b> | <b>Total</b> |
|--|-----------------------------|-------------------------------|--------------|
| Appeal inadmissible (after simplified procedure)   | 6                           | 2                             | 8            |
| Appeal unfounded, fine confirmed   | 23                          | 0                             | 23           |
| Appeal well-founded in whole or in part, with reduction/waiver of fine   | 3                           | 2                             | 5            |
| Appeal well-founded in whole or in part, decision of the regional entity of the Enforcement division of the Department of Environment and Spatial Development annulled without further ado | 8                           | 1                             | 9            |
| Granting of a waiver of appeal   | 0                           | 0                             | 0            |
| Appeal void of purpose   | 3                           | 0                             | 3            |
| Interlocutory judgement  | 3                           | 0                             | 3            |
| <b>Total</b>   | <b>46</b>                   | <b>5</b>                      | <b>51</b>    |

*Table 50 Appeals received against fine decisions of the regional entity in the context of environmental crimes and environmental offences by the Enforcement Court in 2019 and the results of their processing*

In the previous section, it was reported that the regional sanctioning entity imposed 929 alternative administrative fines in 2019<sup>49</sup>. The table above shows that, in 2019, the Enforcement Court received 61 appeals regarding the decisions of the regional sanctioning entity for the imposed alternative administrative fines. This means that almost 6.5% of the regional sanctioning entity's decisions were appealed. However, there is no conclusive one-to-one relationship. Indeed, this percentage cannot be given precisely because the offender has a period of 30 days, starting on the day following the notification of the sanctioning entity's decision, to lodge an appeal with the Enforcement Court. This means that an appeal could still have been lodged against the regional sanctioning entity's decisions taken in the last 30 days of 2019. This in turn may be offset by the fact that appeals received in 2019 may also relate to decisions notified in the last thirty days of 2018.

The table also shows that the Enforcement Court recorded 61 appeals concerning environmental crime in 2019 and that a total of 46 judgements were handed down in 2019. Of the 46 appeals lodged against the alternative administrative fines imposed, 13% were declared inadmissible, 50% of the appeals were declared unfounded with confirmation of the fine imposed by the regional sanctioning entity and 24% of the appeals submitted were declared wholly or partly well founded, with the fine being waived, reduced or annulled.

Furthermore, the table shows that in 2019 the Enforcement Court received 7 appeals against the imposed exclusive administrative fines and, in 2019, it took 5 decisions in this respect. 2 appeals were declared inadmissible, and 3 appeals were declared fully or partially well founded with the fine being waived, reduced or annulled. For the exclusive administrative fines imposed by the regional sanctioning entity in 2019, an "appeal rate" of 8.9% can be calculated. The previous section indicated that the regional sanctioning entity imposed 79 exclusive administrative fines<sup>50</sup> in 2019, while the Enforcement Court received 7 appeals in 2019 for exclusive administrative fines. However, there is no conclusive one-to-one relationship. The percentage of the appeal rate may indeed differ, since the

<sup>49</sup> This does not include decisions to impose a fine with (partial) deferment.

<sup>50</sup> This does not include decisions to impose a fine with (partial) deferment.

offender has a period of 30 days, starting on the day following the notification of the sanctioning entity's decision, to lodge an appeal with the Enforcement Court. This means that an appeal could still have been lodged against the regional sanctioning entity's decisions taken in the last 30 days of 2019. This in turn may be offset by the fact that appeals received in 2019 may also relate to decisions notified in the last thirty days of 2018.



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

It is not only the regional sanctioning entity that can impose administrative fines. The Flemish Land Agency (VLM) has already been empowered to impose administrative fines with the entry into force of the Decree of 22 December 2006 on the protection of water against pollution caused by nitrates from agricultural sources – commonly known as the Manure Decree.

Article 63 of the Manure Decree sets out exhaustively the violations for which administrative fines may be imposed by VLM. This article also sets out the calculations for the amounts of the fines. Article 71 of the aforementioned decree then specifies the violations for which an official report must be drawn up.

The administrative fines imposed in 2019 may relate to violations under the previous Manure Decree – Manure Action Plan IV and the current Manure Decree – Manure Action Plan V.

The Flemish Land Agency was therefore not only asked to specify the number of environmental enforcement inspections carried out in 2019 and the follow-up given to these inspections, as described in chapters 2 and 3, but also to specify how many administrative fines VLM imposed in the context of the inspection reports drawn up by VLM and for which violations.

The following table shows the number of field incident reports and the number of administrative fines imposed by VLM in 2019.

| Administrative fines and site identifications imposed by VLM in 2019 in accordance with the provisions laid down in the Manure Decree                     | Number of field incident reports | Number of fines     |
|---|----------------------------------|---------------------|
|   | 103 <sup>51</sup>                | 2,667 <sup>52</sup> |
| <b>Fines under the MAP5/MAP6 Manure Decree imposed in 2019</b>  |                                  |                     |
| 63 § 1 Nitrogen and phosphate balance   | 0                                | 44                  |
| 63 § 2 More animals than available NER  | 0                                | 1,088               |
| 63 § 3 Fulfilment of manure treatment obligation  | 0                                | 280                 |
| 63 § 5 Over-fertilisation of a lot (lots with a zero restriction on fertilisation or the application of twice the quantity than that permitted by decree) | 10                               | 9                   |
| 63 § 6 Failure to file or incorrect filing of the declaration or incorrect or non-existence of a register   | 2                                | 643                 |
| 63 § 10 Failure to implement measures imposed in accordance with the Manure Decree  | 1                                | 162                 |
| 63 §12 2° Incorrect or lack of subsequent notification or conclusion of transport by the approved manure transporter                                      | 2                                | 5                   |
| 63 § 12 3° Incorrect or lack of subsequent notification or conclusion by the authorised consignor   | 0                                | 0                   |
| 63 § 12 5° Incorrect or lack of subsequent notification or conclusion of the neighbour agreement  | 1                                | 1                   |
| 63 § 12 6° Transport of fertilisers without documents being prepared by the manure transporter  | 8                                | 8                   |
| 63 § 12 7° Failure to draw up the neighbour agreement   | 21                               | 18                  |
| 63 § 12 8° Transport via approved consigner with documents being prepared   | 1                                | 1                   |
| 63 § 12 9° The supplier or purchaser of manure who should have known that the required documents had not been drawn up                                    | 7                                | 10                  |
| 63 § 12 10° No or incorrect use of AGR-GPS  | 14                               | 35                  |
| 63 § 12 12° The supplier or purchaser of manure who had to use a certain method to determine the manure composition and who has not used it               | 0                                | 1                   |
| 63 § 12 13° The manure transporter who should have known that the manure composition was not determined in accordance with the correct method             | 0                                | 0                   |
| 63 § 12 14° The supplier or customer who transports manure with an invalid analysis   | 7                                | 17                  |
| 63 § 12 17° Manure transporter hauling without approval   | 4                                | 4                   |
| 63 § 12 18° Transport is carried out with an unauthorised vehicle   | 3                                | 3                   |
| 63 § 13 Minor infringements in connection with transport documents  | 22                               | 182                 |

Table 51 The number and nature of the administrative fines imposed by the Flemish Land Agency in 2019

The table shows that, in 2019, the Flemish Land Agency imposed 2,667 fines. The difference between the number of violations detected in the field and the number of imposed fines is related to the time limit for the imposition of fines. Fines were not imposed in 2019 for all the violations detected in 2019. The fines imposed in 2019 may still relate, on the one hand, to violations detected in previous

<sup>51</sup> 103 site inspections identified offences that could result in a fine

<sup>52</sup> 2,667 fines were imposed by the Flemish Land Agency in 2019, with or without field incident reports

years and, on the other hand, it is possible that violations detected in 2019 were not fined until 2020. In addition, the fines imposed in 2019 are for both infringements established in the field as well as administrative inspections. This means that some of the fines were imposed administratively as a result of the database audit and are not reflected in the number of field incident reports. A limited number of fines for violations detected in 2019 have not actually been imposed yet and have therefore not been included in the report yet.

## 5 CONCLUSIONS AND RECOMMENDATIONS

This section will provide a summary of the main figures from this report regarding the evaluation of the implemented, environmental enforcement policy, the use of the instruments, and the sanctions policy in 2019.

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 628 regional supervisors were appointed in 2019. In 2019, a total of 215.06 FTEs were deployed for environmental enforcement duties by the regional supervisory bodies, of which 176 FTEs by the supervisors and 39.06 by non-supervisory bodies for administrative support. In 2019, the regional supervisors together carried out 35,883 inspections. The average number of inspections per supervisor was 57 environmental enforcement inspections and the average number of inspections per FTE in 2019 was 167.

This environmental enforcement report shows that, in 2019, regional supervisors mainly enforced proactively, given the fact that no less than 83% of the total of 35,883 environmental enforcement inspections were carried out on their own initiative.

#### Local and federal police

The data concerning the local and federal police show that, in 2019, a total of 11,574 official environmental reports were drawn up in the Flemish Region. Approximately 97% of these official reports were drawn up by the local police and 3% by the federal police. 19% of these official reports related to 'waste by private individuals'.

In 2019, the Federal Police carried out 261 proactive inspections of waste shipments on the territory of the Flemish Region, as part of the National Safety Plan 2016-2019.

With regard to the local police, the data in chapter 2 show that, in 2019, 34% of the 38 responding police zones were able to call upon a supervisor appointed within their own police zone. In 2019, the total number of appointed supervisors within the Local police was 33, which corresponds to almost 3 supervisors per police zone, spread over these police zones that had in fact appointed at least one supervisor. In 2019, just over 20 FTEs were deployed on environmental enforcement tasks within police zones. This results in an average amount of time spent per supervisor on environmental enforcement of 0.61 FTE. In general, we can conclude that the average supervisor in the local police spent more than half of his working time on environmental enforcement tasks in 2019. There was an average of 3 supervisors per police zone with an appointed supervisor in 2019 so the average time spend was of 1.83 FTEs for enforcement duties in the police zones that had appointed a supervisor within their own police zone.

In 2019, a total of 1,753 environmental enforcement inspections were carried out – 76% of which were carried out in response to complaints and reports – by the 33 supervisors appointed within the local responding police zones. The average number of environmental enforcement inspections per supervisor was 53 in 2019 and the average number of inspections per FTE was 87 inspections.

## 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 impose any administrative measures in 2019. In addition, the survey showed that no safety measures were taken or imposed by the provincial governors in 2019.

In 2019, 3 provinces had a total of 20 appointed provincial supervisors. Two provinces deployed a total of 1.6 FTEs for environmental enforcement tasks pursuant to the Environmental Enforcement Decree. The third province did not spend any FTEs on environmental enforcement tasks despite the appointment of 4 supervisors. A total of 103 environmental enforcement inspections 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 2019, 14% of the 149 responding mayors received a request or an enquiry to impose an administrative measure. A slightly higher percentage, namely 18%, applies for the number of mayors who actually imposed an administrative measure in 2019. In total, the responding mayors received 37 questions/requests for the imposition of administrative measures. In addition, the second chapter showed that a total of 59 administrative measures were imposed by the mayors. With regard to the safety measures, it was found that 5% of the responding mayors together had received 7 questions about the imposition of a safety measure in 2019. In addition, 7% of the responding mayors also effectively imposed a safety measure in 2019. A total of 33 safety measures were imposed by the mayors last year.

With regard to nuisance-causing plants in Flemish cities and municipalities, the data in chapter 2 show that, in 2019, 105 of the 149 responding municipalities together had 6,095 class 1 plants and 101 municipalities 22,427 class 2 plants on their territory. The remaining municipalities reported that they have no information about the number of class 1 establishments (44 municipalities) and class 2 establishments (48 municipalities) on their territory. The number of municipalities that have no insight into the number of class 3 establishments is slightly higher, namely 37% of the total of 149 responding municipalities. In 2019, the other 94 municipalities together had 67,011 class 3 establishments on their territory. In addition, 61 of the responding municipalities indicated that they were aware of a total of 4,455 establishments that had not been granted a permit while being subject to a permit or reporting requirement. The remaining 88 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 zone and/or the inter-municipal associations. It can be concluded that a minimum of 15% and a maximum of 23.5%<sup>53</sup> of the responding municipalities still did not have sufficient supervisors at their disposal in 2019. 22 of the 149 responding municipalities even had no supervisor at all at their disposal in 2019. If the number of nuisance-causing establishments is not precisely or insufficiently known, the number

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<sup>53</sup> Taking into account the 16 municipalities that had one supervisor at their disposal and have no idea about the number of nuisance-causing plants 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.

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, 2% of municipalities with more than 30,000 inhabitants did not yet comply with the relevant provisions of the Environmental Enforcement Decree in 2019.

With regard to municipal supervisors, it was found that a total of 143 municipal supervisors were appointed in 2019 within 127 municipalities with only municipal supervisors who together deployed a total of 33.74 FTEs on environmental enforcement duties. The average amount of time spent per municipal supervisor on environmental enforcement duties in 2019 was 0.24 FTE, which means that the average supervisor spends 1/4 of their time on environmental enforcement duties.

In 2019 a total of 3,094 environmental enforcement inspections – of which 61% were carried out in response to complaints and reports – were carried out by the 143 municipal supervisors. However, the average number of environmental enforcement inspections per supervisor amounted to 22 inspections per supervisor in 2019. The average number of inspections per FTE was 92 in 2019.

To organise environmental enforcement within inter-municipal associations, it was found that 93 municipalities made use, either in part or in whole, of 8 inter-municipal associations for the organisation of their environmental enforcement activities in 2019. This means that almost 30% of 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 18 supervisors were appointed within these 8 inter-municipal associations and a total of 7.85 FTEs carried out environmental enforcement duties. These supervisors carried out 421 environmental enforcement inspections.

## 5.2 INSTRUMENTS

The third chapter in this environmental enforcement report deals with the use of the individual environmental enforcement instruments in 2019.

### Inspections and infringements

In 2019, a total of 41,280 environmental enforcement inspections were carried out by regional supervisors, provincial supervisors, (inter-)municipal supervisors and Local police supervisors.

In 81% of all environmental enforcement inspections carried out, no violations were found. A violation was detected for 7,756 inspections. Violations were mainly established when the provincial supervisors and the (inter-)municipal supervisors carried out inspections.

No further action was taken with regard to the violation found in 2% of a total of 7,756 inspections where a violation was found, . Less than 1% of the total of 41,280 environmental enforcement inspections carried out in 2019 were unknown.

### Recommendations and warnings

In 2019, a total of 5,934 recommendations were drawn up out of a total of 33,524 inspections in which no infringement was found. This equates to 18%. The regional supervisory authorities, with the exception of VAZG, use the instrument of recommendation significantly less than the (inter-)municipal supervisors and the supervisors of the Local police.

The warning instrument was widely used in 2019. A warning was issued in 86% of all inspections where a violation was found. A total of 6,649 warnings were formulated in 2019 during 7,756 inspections where an infringement was found.

### Incident reports and official reports

Compared with the other instruments, we observe that, in general, the incident report instrument was not used often in 2019. A total of 303 incident reports were drawn up. The percentage of use of the instrument in relation to the number of inspections in which an infringement was detected was 4% in 2019.

An official report was drawn up for 2,257 of a total of 7,756 inspections where an infringement was established in 2019. This represents a percentage ratio of 29%. With regard to the use of the official report instrument, it can also be established for 2019 that 48%<sup>54</sup> of the official reports drawn up was a priority official report pursuant to the 'Priority Memorandum on the prosecution policy for environmental law in the Flemish Region'.

### Administrative and safety measures

In 2019, a total of 616 administrative measures were imposed by the supervisory authorities. The percentage share compared with the number of inspections where an infringement was found was 8% in 2019. In addition, it was found that 27% of the administrative measures imposed in 2019 were not implemented within the time limits imposed.

In 2019, 64 appeals were lodged against decisions regarding administrative measures. 58 of the appeals lodged in 2019 were declared admissible. For 42 of these appeals, a judgement was given within the time limit. For 14 cases, the period within which the minister must take a decision had not yet expired

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<sup>54</sup> 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.

at the time of the report. 62% of the judgements dismissed the appeal as unjustified, 26% were partially justified and 5% were fully justified. 7% of the appeals were declared devoid of purpose.

In 2019, 4 appeals were lodged against dismissed requests for the imposition of administrative measures. 3 of the appeals lodged in 2019 were declared admissible but unfounded.

A total of 110 safety measures were imposed in 2019. The majority of the safety measures were imposed by the Flemish Agency for Care and Health.



### 5.3 SANCTIONING

In the section on criminal sanctions in 2019, chapter 4 reveals that 4,685 'Environmental Enforcement' cases were recorded by the criminal department of the public prosecutor's offices in the Flemish Region. 56% of these cases came from the general police and 43% from the inspection services.

In more than 43%, or 2,047 cases, of the number of Environmental Enforcement cases recorded by the criminal divisions of the public prosecutors of the Flemish Region in 2019, the main indictment code related to the waste theme. Emissions and environmental law cases represented 12% and 18% respectively of all cases in 2019. In addition, 21% were related to permits and slightly more than 4% to manure.

In 2019, 1,549 cases related to illegal dumping. This means that a significant proportion of the total of cases recorded by the criminal divisions of the public prosecutors in the Flemish Region related to illegal dumping, namely almost 33%.

Chapter 4 also shows that more than 25% of all 'Environmental Enforcement' cases recorded by the criminal prosecution offices of the Flemish Region were still under preliminary investigation on the extraction date. In addition, 22% of cases had already been dismissed without further action (dismissal for reasons of expediency or technical reasons), 2% had proposed an amicable settlement and almost 2% of all cases had already been subpoenaed on the extraction date. Furthermore, 44% of all 'Environmental Enforcement' cases had already been transferred to the competent service on the extraction date, with a view to imposing an administrative sanction.

With regard to the grounds for dismissal, 34% of the 1,017 Environmental Enforcement cases that had already been dismissed on the extraction date were dismissed for reasons of expediency. In addition, 66% were dismissed for technical reasons.

With regard to the administrative sanctions, chapter 4 reveals that the regional sanctioning entity received 2,255 official reports in 2019 from the criminal divisions of the public prosecutors in the Flemish Region with a view to imposing an alternative administrative fine. 43% of the cases submitted to the regional sanctioning entity in 2019 were official reports drawn up by the Local police. In addition, it was found that 96% of official reports were non-priority official reports and 42.5% concerned waste.

In 2019, the regional sanctioning entity processed 2,205 cases referred by the public prosecutor's offices. In 933 of these cases an alternative administrative fine was imposed, with or without deferment. In 187 cases it was decided not to impose a fine and in 1,085 cases an administrative transaction was proposed and paid. An expropriation of unlawful material benefits was imposed in 41 out of a total of 933 imposed alternative administrative fines.

In addition, in 2019 the regional sanctioning entity received 314 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 86%, were drawn up by regional supervisors. Moreover, more than 73% of these incident reports dealt with environmental management and 17.5% with waste.

In 2019, the regional sanctioning entity took 237 decisions regarding identified environmental infringements. In 35% of these decisions an exclusive administrative fine was imposed (with or

without deferment), while in six cases it was decided not to impose a fine. In addition, 145 administrative transactions were presented and paid.

In 2019, appeals were made to the Environmental Enforcement Court for 61 of the 929 alternative administrative fines imposed by the regional sanctioning entity; this corresponds to an appeal percentage of 6.5%. In 2019, the Environmental Enforcement Court handed down a total of 46 judgements concerning appeals against alternative administrative fines imposed by the regional sanctioning entity.

With regard to the exclusive administrative fines imposed by the regional sanctioning entity, the Environmental Enforcement Court received 7 appeals in 2019 and 5 decisions were taken by the Environmental Enforcement Court in 2019. The regional sanctioning entity imposed 79 exclusive administrative fines, bringing the appeal rate to 8.9%.

As regards VLM's power to impose administrative fines in 2019, the last part of chapter 4 shows that 103 field incidents reports were made and 2,667 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. These were already formulated in the previous environmental enforcement reports, but they are still relevant given the figures for 2019 and are therefore repeated here.

### 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 zone. The annual survey showed that there are still – in 2019 even more than in previous years – responding municipalities that do not have at least one or sufficient supervisors at their disposal. It is therefore once again recommended, after 11 years of the Environmental Enforcement Decree, that these municipalities also comply with the provisions of the Environmental Enforcement Decree and also that the authorised body contacts the municipalities in this respect.

#### 2. Appointment of provincial supervisors

Only three of the five Flemish provinces have appointed provincial supervisors and only two provinces spend FTEs on enforcement duties by these supervisors. It is therefore once again 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 fact that the appointed supervisor cannot be involved in environmental enforcement duties on a full-time basis naturally also affects the number of inspections that can be carried out. It is therefore once again recommended that the obligatory number of supervisors per municipality should no longer be expressed in terms of numbers in the Environmental Enforcement Decree and the Environmental Enforcement Order, but should be expressed in FTEs that can be deployed on enforcement activities. Otherwise, there could be a risk that local supervisors will be appointed on paper but that they will de facto be able to spend relatively little time on enforcement duties. Such an approach requires an amendment of the legislation and could be linked to a funding scheme that still needs to be developed but for which a statutory basis has already been provided in the Environmental Enforcement Decree (art. 16.3.4)

### 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 the compliance behaviour is low and where the environmental damage in the event of a violation could

be relatively large or even irreparable. 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 environmental gains that may be achieved.

#### **4. Focus on risk-oriented supervision**

Chapter 3 revealed that no infringements were found in the majority of environmental enforcement inspections carried out by supervisors in 2019. This may indicate a high level of compliance and that the presence of supervisors in the field also has an impact on compliance behaviour; however, this higher number of inspections without infringements 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 and effectively, it is therefore recommended that regulatory bodies focus (more) on a risk-oriented approach.

#### **5. Importance of programme-based enforcement**

It is important to find a balance between programme-based and reactive supervision (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. This recommendation remains in place for 2019.

#### **6. Focus on tackling unlicensed establishments**

The data for 2019 showed that, in 2019, a total of no fewer than 4,455 nuisance-causing but (wholly or partially) unlicensed/reported establishments were active in 61 of the 149 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. For this reason, we recommend once again, despite the decrease in the total number of nuisance-causing but unlicensed/reported establishments, that efforts should be focused primarily on these cases. 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.

The VHRM plans to outsource a study on this subject in 2020. A recommendation should be made in the next enforcement programme on how to address this issue.

### **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.

#### **7. Knowledge of nuisance-causing establishments**

An essential condition for programme-based enforcement is that satisfactory accurate information is available regarding the establishments located on one's own territory. The figures provided for 2019 show once again 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).

The VHRM emphasises the importance of accurately recording each new permit in the register, in such a way that eventually there is clarity about all existing permits.

#### **8. Use specific H 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 – as in previous years – that the specific H codes within the reference numbers are not always used by the regional supervisory bodies. As a result, some cases are included in the figures of public prosecutors in an unidentifiable manner. It is therefore recommended that the various environmental administrations make consistent use of these codes in order to ensure correct data collection and reporting.

#### **9. Priority Memorandum follow-up**

Within the VHRM, the "Priority memorandum on the prosecution policy for environmental law in the Flemish Region" protocol was drawn up with the aim of indicating which violations are considered to be a priority by a supervisor. The content of the protocol aims to ensure that appropriate action is taken, in particular with regard to those violations identified as priorities, either through criminal proceedings or at least through administrative sanctions. Gaining insight into the implementation of this priority memorandum is obviously of particular importance. This assumes, on the one hand, that all supervisors indicate whether the official report drawn up is a priority or not, and on the other hand, that the sanctioning bodies also indicate the manner in which these official reports considered to be a priority were dealt with, and provide feedback on this to the supervisors. The reported figures show – as in previous years – that not all the bodies involved make a classification of the official report a priority or do not draw one up, or do not further introduce the data classification into their own monitoring system. This means it is not possible to assess the Priority Memorandum adequately. It is therefore again recommended that all the enforcement bodies involved guarantee the correct implementation and tracking of the Priority Memorandum.

#### **10. Full monitoring and reporting**

It is still recommended that the extent to which each enforcement body can ensure full monitoring (internal) and reporting (internal and to third parties, e.g. the VHRM or its successor) is investigated, and in particular with regard to the use of each instrument, but also that it is checked and monitored whether the problem has been remedied each time and when the enforcement process is terminated. Such monitoring provides a picture of the deployment and effectiveness of the instruments.

#### **Failure to implement administrative measures on time**

##### **11. Administrative measures**

Imposing administrative measures is intended to end an illegal situation within the imposed time limit. In 2019, 27% of the imposed administrative measures were not implemented within the time limit set by the supervisor. 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, again recommended that the authorised body uses the available instruments to enforce an imposed administrative measure within the required time limit, such as the administrative penalty payment, administrative coercive measures or an official report on the failure to implement an

administrative measure. 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.

### Establishing illegal dumping

#### 12. Unauthorised dumping

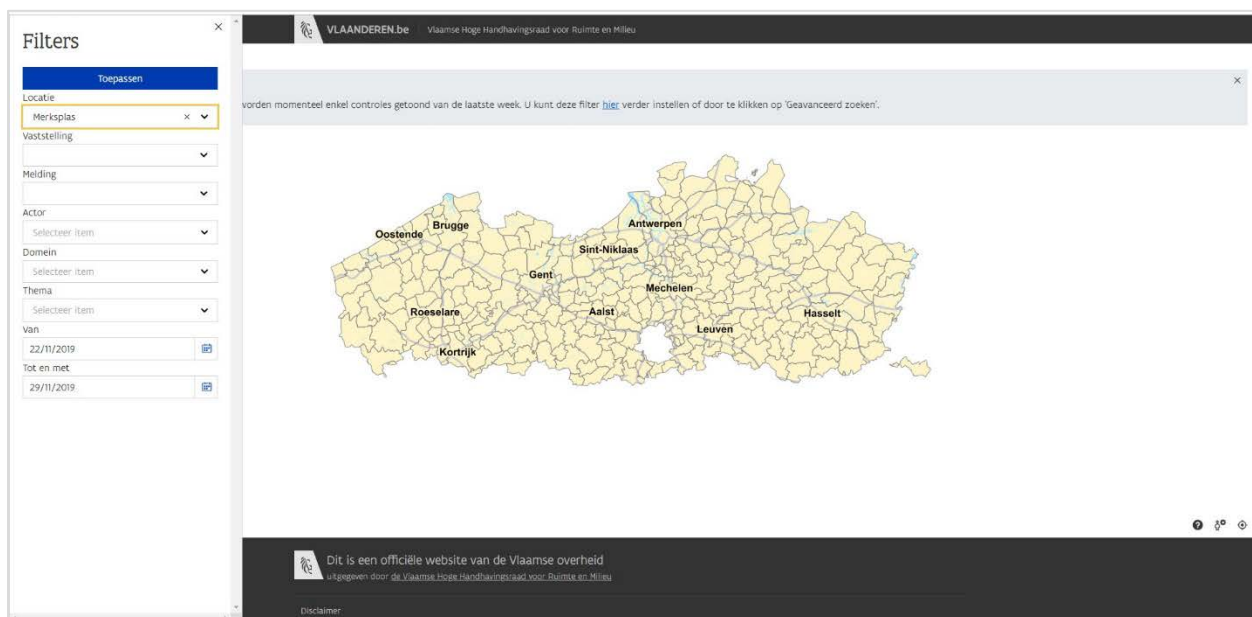
As in previous years, the figures from the public prosecutor's offices show that unauthorised dumping is the most frequently identified offence in the Flemish Region. In fact, almost 33% of all 'Environmental Enforcement' cases recorded by the public prosecutor's offices in the Flemish Region in 2019 concern unauthorised 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 the regional sanctioning entity 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. The VHRM investigated how these infringements, if included in the GAS regulations, can also be established and reported by regional supervisors, and they formulated policy advice in this respect.

## 6 ACTIVITIES OF THE FLEMISH HIGH ENFORCEMENT COUNCIL FOR SPATIAL PLANNING AND ENVIRONMENT IN 2019

In this last chapter, the Flemish High Enforcement Council for Spatial Planning and Environment wishes to report on its own work in 2019. Activities were carried out, both in the plenary meetings and in the working groups<sup>55</sup>, that fall within the scope of the VHRM's tasks as provided by decree and which benefit enforcement in the Flemish Region. The activities can, of course, be considered as part of VHRM's strategic and operational plan, but can also be related to certain recommendations formulated by the VHRM in previous enforcement reports.

### 1. Inspection Viewer

In 2018, the pilot project 'GIS – shared geographical information system' started in collaboration with the division Data and Information Management & Digital Agency of the Department of Environment and Spatial Development, as a follow-up to the study 'The possibilities and optimisation of information exchange in the context of environmental enforcement' that was outsourced in 2017. The project was called 'Inspection Viewer'. The inspection viewer consists of a management module and a viewer module. Both modules were tested extensively and adapted to accommodate the comments. This pilot project was completed in the spring of 2019. The parties who participated in the project found the application useful and said it had significant added value for enforcement purposes. Based on this positive evaluation of the pilot project, the VHRM developed the application together with the division Data and Information Management & Digital Agency of the Department of Environment and Spatial Development. During the development, great attention was also paid to the GDPR in collaboration with the data protection office of the Department of Environment and Spatial Development.



<sup>55</sup> The following working groups have been active within the VHRM since 2018:

1. Enforcement Praxis Environment
2. Knowledge Development and Sharing
3. Environmental Enforcement
4. Enforcement Codex RO

The inspection viewer is an application for supervisors, reporting officers and urban development inspectors (of municipalities and cities, inter-municipal partnerships, provinces and regional government) which provides an overview of the inspections carried out by the different enforcement actors in a given territory by simply uploading the inspections. This application has been developed in such a way that enforcers can contact each other to obtain more information about a specific inspection which has been carried out by another enforcing body. The enforcement history can be valuable for the further planning of one's own inspection. It makes it possible to coordinate activities if useful or required so unnecessary inspections can be avoided.

The inspection viewer was presented at the VHRM conference 'Environmental Enforcement 2020-2030'. A short demo of the application was also given. The application was launched in the beginning of 2020.

## 2. [www.milieuhandhaving.be](http://www.milieuhandhaving.be)

In 2019, [www.milieuhandhaving.be](http://www.milieuhandhaving.be) was updated with the latest contact details. The website was officially launched at the VHRM conference 'Environmental Enforcement 2020-2030'. All enforcement actors received flyers for distribution to citizens. The launch of the website in 2020 was communicated to all enforcement actors via the VHRM newsletter. The 1700 hotline was also contacted to promote the website.

Vlaanderen

Vlaanderen is ruimte & milieu

Over deze website

Wat zoekt u? **ZOEKEN**

Wegwijzer Veelgestelde vragen Trefwoordenlijst

### Waarop heeft de hinder of verontreiniging betrekking ?

U kan milieuhinder melden als u zintuigelijk iets waarneemt in uw leefomgeving waaraan u zich stoort. Verschillende instanties zijn bevoegd om meldingen van milieuhinder te behandelen, maar elk binnen hun eigen domein. Klik op de rubriek voor de hinder die u ondervindt en vervolledig de vragenlijst om te weten bij welke instantie u terecht kan.

|                     |                    |            |                |
|---------------------|--------------------|------------|----------------|
| Afval               | Asbest             | Bodem      | Dieren         |
| Geluid / trillingen | Geur / Reuk / Stof | Jacht      | Licht          |
| Mest                | Natuur en Bos      | Pesticiden | Planten        |
| Straling            | Visserij           | Water      | Andere oorzaak |

Problemen met de website ?

Vlaanderen verbeelding werkt

Milieuhandhaving.be is een officiële website van de Vlaamse overheid  
uitgegeven door [Vlaamse Hoge Handhavingraad voor Ruimte en Milieu](#)

DISCLAIMER



### 3. Preparing the Environmental Enforcement Report 2018 and the Spatial Planning Enforcement Report 2018

In 2019 the VHRM surveyed all enforcement actors for the fourth time to prepare the Spatial Planning Enforcement Report and the for the tenth time to prepare the Environmental Enforcement Report. The Environmental Enforcement Report also included an evaluation of 10 years of the Environmental Enforcement Decree.



### 4. Workshops

In 2019, the VHRM organised a workshop with a preliminary brainstorming session on the administrative penalty payment. The purpose of this workshop was to start a discussion based on practical experiences that would lower the threshold for using the instrument and seek answers to questions such as "In what situations can the administrative penalty payment offer a solution?", "What procedure must be followed?", "What templates and scenarios already exists?", "How is the amount determined?".

Cases related to the environment and spatial planning were presented during the workshop by regional enforcement actors (Nature Inspectorate and OVAM) and supervisors of the inter-municipal partnerships (VENECO AND IOK). The Enforcement division of the Department of Environment and Spatial Development gave an introduction about the follow-up process within spatial planning. There was also time for discussions and questions.

## 5. Conference

At the end of 2019, the VHRM organised a study day on Environmental Enforcement 2020-2030 in Mechelen to celebrate ten years of cooperation between the enforcement actors. The VHRM not only invited supervisors, reporting officers and municipal urban development planners for this edition but also mayors and aldermen of environment and spatial planning.

In the morning, a panel debate was organised in which several members of the VHRM and enforcement actors represented in the VHRM took part. The panel debate – which was moderated by the journalist Wim De Vilder – focused on the following two themes with premises and questions:

- ▶ Environmental enforcement policy (integration of the environment , looking ahead to the future, enforcement trends, etc.)
- ▶ Role of the VHRM (consultative and advisory function, output and instruments, importance of the network for enforcers, exchange of knowledge, etc.)

In the afternoon, workshops on the following themes were held:

- ▶ Towards risk-driven supervision through enforcement programmes
- ▶ The path to unified/integrated environmental enforcement
- ▶ Support for the restitution claim procedure: criminal or administrative track
- ▶ Administrative penalty payment
- ▶ Learning from practical experience: about asbestos and other waste problems



## 6. Green deal – Domestic wood heating

In 2019, the VHRM compiled a questionnaire together with other stakeholders which was sent out in 2020 to municipalities, inter-municipal partnerships and police zones to find out how complaints about domestic wood burning are dealt with.

## 7. Environmental Enforcement Knowledge Centre – Tools and guidelines for enforcers

Templates and models were also developed and updated by the VHRM in 2019. The documents can be found on the VHRM website under "Environment and Spatial Planning", "Environment", or "Spatial Planning".

Updated recommendations of working methods were also developed and published on the VHRM website.

The decision tree for information sharing was also updated.

## 8. Contribution of the VHRM to the Coalition Agreement

After the elections of the Flemish Parliament in May 2019, the VHRM [contributed](#) to the Coalition Agreement. This contribution was made available to the negotiators. The VHRM advocated an integrated, effective and coordinated enforcement at the heart of a support network.

## 9. Support for the municipal enforcement priorities

In 2019, the VHRM prepared a [road map](#) and a number of best practices to help municipalities set up a priority framework. The road map and the examples can be found on the VHRM website.

## 10. Policy advice – No smoking in the car in the presence of children

In 2019, the VHRM formulated a policy advice at the request of the minister regarding the smoking ban in the car in the presence of children. The focus of this advice was, among other things, to consult the involved enforcement actors during the drafting phase of the regulations to be enforced.

## 11. Analysis of nuisance-causing but unlicensed plants

To prepare its environmental enforcement reports, the VHRM asks the cities and municipalities each year to report the number of class 1, 2 and 3 licensed establishments according to annex I to title II of VLAREM located on their territory and to give an estimate of the total number of unlicensed nuisance-causing plants in their city/municipality. Establishments classified according to annex 1 to VlareM II but operated without a permit pose a risk of (significant) environmental damage. The estimated figures remain high year after year so the VHRM has outsourced a study to investigate this phenomenon. The VHRM therefore prepared an preliminary memorandum in 2019 which was elaborated into specifications for a study that will be outsourced in 2020.

## 12. International contacts

In 2019, the VHRM continued to monitor developments in the foreign enforcement landscape. The VHRM was a member of the European network IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) and of the international network INECE (International Network for Environmental Compliance and Enforcement) in 2019.

## 13. Communication, internal and external

The VHRM uses its own newsletter to reach as many as possible supervisors, officials and employees of governments and enforcement agencies that are active in environmental and/or spatial planning. The newsletter keeps enforcement bodies informed about regulatory changes, tools developed within the VHRM, VHRM initiatives, documents available to enforcement actors on the VHRM website, the publication of enforcement reports, etc. In this way, the VHRM ensures that more than 1,400

enforcement bodies are reached in an efficient manner and remain informed of the latest developments in the enforcement sector.

The section of the VHRM website that is accessible to enforcers grew substantially in 2019 into an effective *Environmental Enforcement Knowledge Centre*. Here enforcers can find the models and templates prepared by the VHRM, practical manuals, check-lists, procedures and glossaries.

Furthermore, during plenary meetings and in working group meetings, the VHRM continued to function in 2019 as a consultation forum for the exchange of ideas, the sharing of knowledge, the transfer of knowledge, and the exchange of information. In this way, too, the VHRM aims to create greater support for environmental enforcement.

## 7 APPENDICES

### 7.1 GLOSSARY – ABBREVIATIONS

|                   |  |
|-------------------|--|
| /                 | Not available  |
| AGR-GPS           | Any means of transport used by an approved manure transporter of Class B or Class C to transport livestock manure or other fertilisers must be AGR-GPS compatible at all times. This AGR-GPS compatibility means that every authorised means of transport that is part of an operational AGR-GPS system must have AGR-GPS equipment. In addition, the signals sent by that equipment via a computer server, managed by a GPS service provider, must be sent directly and immediately to the Manure Bank. |
| ALBON             | Former Land and Soil Protection Service, Underground and Natural Resources Service of the Department of Environment, Nature and Energy   |
| AMI               | Former Environmental Inspectorate Division of the Department of Environment, Nature and Energy   |
| AMMC              | Former Division of Environmental Enforcement, Environmental Damage and Crisis Management of the Department of Environment, Nature and Energy   |
| AMV               | Former Environmental Licences Division of the Department of Environment, Nature and Energy   |
| ANB               | Agency for Nature and Forests  |
| ANG               | General National Database  |
| AWV               | Agency for Roads and Transport   |
| AWZ               | Waterways and Sea Canal NV Division;   |
| B.O.G.            | Belgian Official Gazette   |
| DABM              | Decree of 5 April 1995 governing the general provisions on environmental policy  |
| DJSOC/Environment | Environment Service of the Directorate for Combating Serious and Organised Crime of the Federal Police   |
| ECO form          | Summary document completed by the police during a waste transport inspection and forwarded to the central Environment service for centralised collection. In addition to checking the case at hand, the data are also used to perform operational and strategic analyses.  |
| GAS               | Municipal administrative sanction  |
| RD                | Royal Decree   |
| MOW               | Department of Mobility and Public Works  |
| n / #             | Number   |
| OVAM              | Public Waste Agency of Flanders  |
| OR                | Official report  |
| CC                | Criminal cases   |
| VAZG              | Flemish Agency for Care and Health   |
| VHRM              | Flemish High Enforcement Council for Spatial Planning and Environment  |
| VLAREM            | Flemish Regulation on the Environmental Permit   |
| VLM               | Flemish Land Agency  |
| VMM               | Flanders Environment Agency  |
| FTE               | Full-time equivalent   |

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## 7.4 LIST OF RESPONDING MUNICIPALITIES

|              |                   |                       |                    |
|--------------|-------------------|-----------------------|--------------------|
| Aalst        | Evergem           | Kruikeke              | Retie              |
| Aalter       | Gavere            | Kruisem               | Rijkevorsel        |
| Aartselaar   | Geetbets          | Laakdal               | Roeselare          |
| Alken        | Genk              | Lanaken               | Ronse              |
| Alveringem   | Ghent             | Langemark-Poelkapelle | Roosdaal           |
| Antwerp      | Geraardsbergen    | Lebbeke               | Rumst              |
| Ardoois      | Gingelom          | Ledelegem             | Schelle            |
| Avelgem      | Gooik             | Lendeledede           | Sint-Laureins      |
| Balen        | Haacht            | Leopoldsburg          | Sint-Martens-Latem |
| Beernem      | Ham               | Liedekerke            | Sint-Niklaas       |
| Beerse       | Hamont-Achel      | Lier                  | Sint-Pieters-Leeuw |
| Berlare      | Hasselt           | Maarkedal             | Stabroek           |
| Bever        | Hechtel-Eksel     | Maaseik               | Staden             |
| Bilzen       | Heers             | Machelen              | Steenokkerzeel     |
| Blankenberge | Heist-op-den-Berg | Malle                 | Temse              |
| Boechout     | Hemiksem          | Mechelen              | Tervuren           |
| Bonheiden    | Herentals         | Merchtem              | Tielt              |



|                |              |                   |             |
|----------------|--------------|-------------------|-------------|
| Boom           | Herenthout   | Merelbeke         | Waregem     |
| Boortmeerbeek  | Herstappe    | Merksplas         | Wervik      |
| Borgloon       | Hoegaarden   | Middelkerke       | Westerlo    |
| Boutersem      | Holsbeek     | Moerbeke          | Wetteren    |
| Bredene        | Hoogstraten  | Moorslede         | Willebroek  |
| Bruges         | Hove         | Nazareth          | Wommelgem   |
| Damme          | Huldenberg   | Nieuwerkerken     | Wuustwezel  |
| De Panne       | Ypres        | Oostkamp          | Zandhoven   |
| De Pinte       | Izegem       | Oostrozebeke      | Zele        |
| Deerlijk       | Kapellen     | Opwijk            | Zelzate     |
| Denderleeuw    | Kaprijke     | Oudenaarde        | Zoersel     |
| Dendermonde    | Kasterlee    | Oudsbergen        | Zonnebeke   |
| Dentergem      | Keerbergen   | Overijse          | Zoutleeuw   |
| Diepenbeek     | Kluisbergen  | Peer              | Zulte       |
| Diest          | Knokke-Heist | Poperinge         | Zwalm       |
| Dilsen-Stokkem | Koksijde     | Putte             | Zwevegem    |
| Duffel         | Kortemark    | Puurs-Sint-Amands | Zwijndrecht |
| Edegem         |              |                   |             |

## 7.5 LIST OF RESPONDING POLICE ZONES

|   |                                    |
|---|------------------------------------|
| Police zone AMOW                                | Police zone HANO                   |
| Police zone Antwerp                             | Police zone Kempen Noord-Oost      |
| Police zone Arro Ypres                          | Police zone K-L-M                  |
| Police zone Balen/Dessel/Mol                    | Police zone Limburg Capital Region |
| Police zone Beringen/Ham/Tessenderlo            | Police zone Mechelen/Willebroek    |
| Police zone Bierbeek/Boutersem/Holsbeek/Lubbeek | Police zone Middelkerke            |
| Police zone Bilzen/Hoeselt/Riemst               | Police zone MIRA                   |
| Police zone Bodikap                             | Police zone Neteland               |
| Police zone Brakel                              | Police zone North                  |
| Police zone BRT                                 | Police zone Ostend                 |
| Police zone Buggenhout/Lebbeke                  | Police zone Pajottenland           |
| Police zone CARMA                               | Police zone Polder                 |
| Police zone Damme/Knokke-Heist                  | Police zone Turnhout Region        |
| Police zone Denderleeuw/Haaltert                | Police zone Ronse                  |
| Police zone Druivenstreek                       | Police zone Vlaamse Ardennen       |
| Police zone Geel/Laakdal/Meerhout               | Police zone VLAS                   |
| Police zone Grensleie                           | Police zone Voer en Dijle          |
| Police zone Hageland                            | Police zone Zaventem               |
| Police zone Hamme/Waasmunster                   | Police zone Zwijndrecht            |

## COLOPHON

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