

Environmental Enforcement Report 2012

Flemish High Council of Environmental Enforcement



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ENVIRONMENTAL ENFORCEMENT REPORT 2012



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The Environmental Enforcement Report 2012 is the fourth report of its kind to be published by the Flemish High Council of Environmental Enforcement. The publication of this report in the summer of 2013 is a catch-up operation vis-à-vis the publication of the previous reports. The process of collecting and processing data is gradually becoming established with the questioned enforcement actors, as well as with the Flemish High Council of Environmental Enforcement itself. However, this does not mean that the learning process is already at an end. It would indeed be possible to shorten the survey, to simplify the data processing and to give more general explanations in order to accelerate the publication of this report. However, this would signify that certain aspects are no longer surveyed, that the existing reality cannot be reflected in all its facets and that the report would no longer be of the same quality. The Flemish High Council of Environmental Enforcement has to perform this balancing act each time it starts drawing up the environmental enforcement report.

Since its entry into office the Flemish High Council of Environmental Enforcement has tried to provide added value to the enforcement actors in the Flemish Region. To that end, several initiatives were taken. Earlier this year, the first environmental enforcement protocol - the Priorities Document on the Prosecution Policy for Environmental Law in the Flemish Region - was signed by Minister Schauvliege and Minister Turtelboom.¹ This protocol is to ensure alignment between the supervision and the imposition of sanctions. In addition, the Flemish High Council of Environmental Enforcement formulated an advisory opinion for the optimisation of local environmental enforcement. For this reason, a study was contracted out and a congress for and on local supervisors was organised in 2012. Also, a contribution was made to the evaluation of the Environmental Enforcement Act. The relevant advisory opinion from the Flemish High Council of Environmental Enforcement contains proposals originating from the various enforcement actors. Apart from a policy-related contribution, the Flemish High Council of Environmental Enforcement also tries to make a highly practical contribution by organising congresses and workshops on topical subjects, such as targeted supervision and enforceability of regulations, by providing models and templates to facilitate enforcement practice, by setting up a digital exchange forum, and, especially, by organising consultation between all the enforcement actors. Through these and other initiatives the Flemish High Council of Environmental Enforcement tries to establish a framework for cooperation and open dialogue between the different enforcement actors.

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

Prof. Dr. Michael G. Faure LL.M.
Chairman of the Flemish High Council of Environmental Enforcement

¹ Available in English: <http://www.vhrm.be/english/20130930-priority-note.pdf>

WATER INFRASTRUCTURE

*Flood area alongside the Velve
in Kersbeek-Miskom.*

Photo © De Ceulaer Leander/ANB



1. Introduction

1.1 Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy

The origin of the Flemish High Council of Environmental Enforcement (Vlaamse Hoge Raad voor Milieuhandhaving or VHRM) goes back to the Flemish Parliament Act of 21 December 2007 which supplements the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy with a Title XVI 'Monitoring, Enforcement and Safety Measures'², in short the Environmental Enforcement Act.

The VHRM was created to support the Flemish Parliament and the Government of Flanders in the coordination of environmental enforcement policy and the interpretation of its content. In view of an efficient enforcement of environmental law, the VHRM sets up systematic consultations with the environmental enforcement actors. These consultations can result in agreements between the different actors. Such agreements are called protocols. The VHRM will set the pace, both in organising consultations with the environmental enforcement actors and in preparing and finalising the protocols. Within this framework, reference can be made to the first environmental enforcement protocol that was signed on 18 March 2013 by Minister Schauvliege and Minister Turtelboom, namely the 'Prioriteitennota vervolgingsbeleid milieurecht in het Vlaamse Gewest 2013'³ (Priorities Document on the Prosecution Policy for Environmental Law in the Flemish Region).

The composition of the plenary meeting of the Flemish High Council of Environmental Enforcement was laid down in the Flemish Government Decree of 13 February 2009 on the appointment of the members of the Flemish High Council of Environmental Enforcement⁴. Moreover, the VHRM works together with a number of working groups to study specific issues. The complete composition of the plenary meeting can be found on the VHRM website⁵.


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

2 Publication in the Belgian Official Journal, 19 February 2009.

3 <http://www.vhrm.be/documenten/milieuhandhavingsprotocollen/milieuhandhavingsprotocollen>

4 Publication in the Belgian Official Journal, 19 March 2009.

5 <http://www.vhrm.be/vhrm/leden-vertegenwoordigers-en-plaatsvervangers>

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- ▶ The environmental enforcement programme determines, for the coming calendar year, the enforcement priorities of the regional authorities that are in charge of environmental law enforcement. It may also contain recommendations regarding environmental law enforcement at the provincial and municipal levels and for cooperation with and between these policy levels.
 - ▶ The Environmental Enforcement Programmes 2010 and 2011 can be found on the VHRM website⁶. It was experienced, however, that the environmental enforcement programme as it exists today only has limited added value. For this reason, the VHRM is now considering adjusting the programme content in order to try to pursue a more strategic approach, for instance, through joint actions and cooperation in the field within the framework of priority themes and in the form of a multi-annual planning.
 - ▶ The environmental enforcement report contains at least a general evaluation of the regional environmental enforcement policy pursued over the past calendar year; a specific evaluation of the use of the individual enforcement instruments; an overview of cases in which no sentence was passed within the set term with respect to the appeals against decisions to impose administrative measures; an evaluation of the decision-making practice of public prosecutor's offices when it comes to whether or not to prosecute an identified environmental offence; an overview and comparison of the environmental enforcement policy conducted by municipalities and provinces; an inventory of the insights obtained during enforcement activity which can be used to improve environmental law, policy visions and policy implementation; and recommendations for the further development of environmental enforcement policy.

This report should include any relevant figures on the environmental enforcement policy conducted over the past calendar year. The environmental enforcement report is regarded as a crucial instrument in the support, and possible adjustment, of the environmental enforcement policy to be pursued.

These environmental enforcement reports from 2009 through 2012 are available on the VHRM website.⁷

⁶ <http://www.vhrm.be/documenten/milieuhandhavingsprogramma>

⁷ <http://www.vhrm.be/documenten/milieuhandhavingsrapport>

1.2 Methodology and relevance of the Environmental Enforcement Report 2012

1.2.1 Methodology

The aim of the environmental enforcement report is to provide a concrete picture, based on relevant, reliable figures and qualitative data, of the environmental enforcement policy that was pursued in the Flemish Region from 1 January 2012 through 31 December 2012.

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

The following actors were asked about their activities in the area of environmental law enforcement between 1 January 2012 and 31 December 2012:

- ▶ the Environmental Inspectorate Division of the Department of Environment, Nature and Energy;
- ▶ the Environmental Licences Division of the Department of Environment, Nature and Energy;
- ▶ the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy;
- ▶ the Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy;
- ▶ the Secretary-General of the Department of Environment, Nature and Energy;
- ▶ the Public Waste Agency of Flanders;
- ▶ the Flemish Land Agency;
- ▶ the Flemish Environment Agency;
- ▶ the Agency for Nature and Forests;
- ▶ Waterwegen en Zeekanaal nv;
- ▶ the Flemish Agency for Care and Health;
- ▶ the Agency for Roads and Traffic;
- ▶ nv De Scheepvaart;
- ▶ the Department of Mobility and Public Works;
- ▶ the Flemish mayors;

- ▶ the Flemish municipalities;
- ▶ the Flemish police districts;
- ▶ the federal police;
- ▶ the Flemish provincial governors;
- ▶ the Flemish provincial supervisors;
- ▶ the Environmental Enforcement Court;
- ▶ the public prosecutor's offices.

For the first time, intermunicipal associations engaged in environmental law enforcement were questioned as well, since the Environmental Enforcement Act stipulates that municipalities may opt to call on the services of a supervisor via an intermunicipal association or through intermunicipal cooperation. The study 'Local Environmental Enforcement. The Implementation of the Environmental Enforcement Act at the Municipal Level'⁸ and the conference on local environmental enforcement⁹, organised by the VHRM in November 2012, showed that this intermunicipal type of enforcement has taken shape as well.

A standard questionnaire was used again in order to obtain comparable data. Questions were asked, among other things, about the number of supervisors within the organisation, the number of full-time equivalents (FTE) dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors, the number of inspections carried out between 1 January 2012 and 31 December 2012, the number of initial official reports and identification reports drawn up, and the number of imposed administrative measures and safety measures. The bodies imposing the sanctions were also asked about their activities between 1 January 2012 and 31 December 2012.

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

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

1.2.2 Structure

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

8 <http://www.vhrm.be/documenten/studies/studie-lokale-milieuhandhaving.-de-implementatie-van-het-milieuhandhavingsdecreet-op-gemeentelijk-niveau>

9 <http://www.vhrm.be/voor-de-toezichthouder/congres-lokale-milieuhandhaving-2012>

The focus in this second chapter is thus mainly on the efforts made by the supervisory bodies. First, an evaluation is made of the environmental enforcement policy pursued in the past calendar year by the regional supervisors, and the federal and local police, as well as of the enforcement activities performed at the local level by provincial governors, provincial supervisors, municipal supervisors and supervisors of inter-municipal associations. Figures will be provided of the number of supervisors per organisation, the number of FTEs dedicated by this supervisor/these supervisors to environmental enforcement duties within the framework of the Environmental Enforcement Act, the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors, and the number of inspections carried out by these supervisors in 2012. This will also allow us to get an idea of the number of inspections that were carried out per supervisor. With regard to the federal and local police, the types of official reports are discussed that were drawn up by the police forces in the context of environment in 2012.

In addition, specific attention is devoted to the proactive inspections carried out by the federal police within the framework of waste shipments, and to the activities of local police supervisors. After that, the pursued local environmental enforcement policy is evaluated. When local environmental enforcement policy is discussed, attention is also drawn to the number of Category 1, Category 2 and Category 3 plants on the territory. In addition, the supporting role of the provinces with respect to the municipalities is evaluated on the basis of the reports of the provinces in the framework of the Cooperation Agreement 2008-2013. Finally, the supervisory duties carried out by the Flemish cities and municipalities are studied.

In Chapter 3 emphasis is on the use of the individual environmental enforcement instruments, the administrative measures and the safety measures by the different environmental enforcement actors. In order to clearly define the term 'environmental enforcement instrument', a list was made of these instruments on the basis of the parliamentary preparations for the Environmental Enforcement Act. This list was used to draw up the standardised questionnaire. It concerns the following instruments: recommendations, exhortations, administrative measures (regularisation order, prohibition order, administrative enforcement, or a combination thereof), safety measures, administrative fines (and deprivation of benefits) and criminal penalties. Administrative fines, administrative transactions and criminal penalties will be discussed in a separate chapter, however, namely Chapter 4 'Evaluation of the sanctions policy pursued in the past calendar year'. Just like in the Environmental Enforcement Report 2010 and 2011, the enforcement instruments will be compared to the number of inspections during which a breach was identified and not to the total number of inspections that were carried out (as was the case in the Environmental Enforcement Report 2009).

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

Next, Chapter 4 'Evaluation of the sanctions policy pursued over the past calendar year' provides an overview of the administrative and criminal sanctions imposed by the Flemish Land Agency (VLM), the Environmental Enforcement, Environmental Damage and Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy, the public prosecutor's offices and the Environmental Enforcement Court (MHHC).

Other types of fines can be imposed as well, such as municipal administrative sanctions and fines in the framework of mandatory levies. However, these do not fall within the scope of the Environmental Enfor-



cement Act and will therefore not be further discussed.

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

Not only the data pertaining to 2012 will be used to carry out the evaluation below. In addition, a comparison will be made with data from previous years and previous reports, wherever possible and relevant.

1.2.3 Notes

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

Secondly, attention should be drawn to the fact that the response rate was still not 100% for this environmental enforcement report either. Although the various relevant actors were sent an official request to participate and there is an obligation to participate for actors who are part of the Flemish Region, there was no complete response. As a result, the figures are not entirely representative and the conclusions as well should be interpreted in this light. The positive element is that the response rate has increased year by year.

As indicated earlier in the description of the structure, the activities of local police supervisors are discussed in a separate chapter, after the activities of the federal police. This has to do with the fact that local police forces have distinct duties with regard to environmental law enforcement. On the one hand, police officers have been appointed as supervisors within a police district in some cities and municipalities. On the other hand, local police forces are in charge of basic police services and more specifically carry out all duties of the administrative and judicial police that are necessary to manage local events and phenomena that occur on the territory of the police district, as well as to fulfil some police duties of a federal nature. In this context they naturally also enforce environmental law, but not as supervisors under the Environmental Enforcement Act. For this Environmental Enforcement Report 2012 the superintendents of the Flemish police districts were asked to only report, when a supervisor or supervisors was/were appointed within the police district, about the activities of this supervisor or these supervisors. This section (2.2.3) should therefore be read together with the evaluation of the pursued local environmental enforcement policy (2.3.6).

In order not to increase the reporting burden unnecessarily, the questionnaire was not extended in con-

trast to the previous years. However, this means that the present report can only reflect what the environmental enforcement actors and supervisors did in terms of supervision and the imposition of sanctions in 2012, not how and why they did so. As the survey was about figures and no context information was asked for, this may leave room for interpretation. Still, the members, representatives and deputies of the VHRM were given the opportunity to comment further on the content of the data after they were processed and to subsequently place the results in a broader context.

Even this fourth environmental enforcement report has its limits, although it is a next step in the evaluation of the environmental enforcement policy in the Flemish Region and in the further implementation of the Environmental Enforcement Act in 2012. With the environmental enforcement report the Flemish High Council of Environmental Enforcement not only tries to provide added value for policymakers, but also for the enforcement actors themselves.

1.3 Environmental enforcement policy

It goes without saying that the activities carried out by environmental enforcement actors in Flanders in 2011 were not random. The environmental enforcement policy in the Flemish Region is determined, among other things, by the Coalition Agreement of 15 July 2009¹⁰, the Policy Memorandum on Environment and Nature 2009-2014¹¹ and the Policy Paper on Environment and Nature 2011-2012¹² of Minister Schauvliege.

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

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

The Policy Memorandum 2009-2014 on Environment and Nature of the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, lays down, among other things, the development of an effective administrative enforcement of environmental infringements and environmental offences as a strategic objective. The new legal framework – the Environmental Enforcement Act – should make it possible to react quickly and make a clear statement when imposing exclusive (in the case of environmental infringements) and alternative (in the case of environmental offences) administrative fines, both to offenders and to supervisors and reporting authorities. The development of a clear and coherent framework containing criteria on the basis of which the amount of the fine and/or the deprivation of benefits can be calculated, with a view to legal certainty, is considered equally important.

The implementation of the Environmental Enforcement Act is also included in the policy memorandum as an operational objective. The main lines and priorities of environmental enforcement policy will be determined, with account being taken of the recommendations in the annual environmental enforcement programmes that are drawn up by the Flemish High Council of Environmental Enforcement. The practice of enforcement will be evaluated for its effectiveness and efficiency, among other things via the annual environmental enforcement reports. Cooperation agreements between the different environmental enforcement actors will, when considered useful, be anchored in enforcement protocols. In the framework

10 The entire 'Coalition Agreement of 15 July 2009' can be consulted at the following URL: http://www.vlaanderen.be/servlet/Satellite?c=Solution_C&cid=1247734278469&pagename=Infolijn/View

11 The entire 'Policy Memorandum on Environment and Nature 2009-2014' can be consulted at the following URL: http://www.vlaanderen.be/servlet/Satellite?pagename=Infolijn%2FView&c=Solution_C&p=1186804409590&cid=1171947608450

12 The entire 'Policy Paper on Environment and Nature 2011-2012' can be consulted at the following URL: <http://docs.vlaamsparlement.be/docs/stukken/2011-2012/g1328-1.pdf>

of the Flemish Parliament Act the Minister will grant support to supervisors and criminal investigators.


The idea is also that, as a result of the increase in the number of local (municipal, or, where they have been appointed, intermunicipal and police district) supervisors, the Flemish Environmental Inspectorate will be able to concentrate more on plants with greater environmental relevance (such as Seveso and IPPC companies) and on waste chain enforcement. The enforcement should change from a reactive to a proactive approach through specific thematic enforcement campaigns, on the one hand, and to a routine approach, on the other. In the latter, inspections focused on emissions and self-monitoring inspections of companies are of central importance. Attention should also be paid to the supervision of unlicensed facilities and activities which nevertheless require a licence.

In implementation of the Coalition Agreement of 15 July 2009 the Government of Flanders opts for a partnership with strong local administrations, also in the area of environmental and nature policy. Strategic objectives therefore include that the Government of Flanders fights compartmentalisation, creates more internal cooperation and synergies and supports local administrations in their pursuit of a local environmental policy. In this framework, the adjustment of the Cooperation Agreement 2008-2013 with the local authorities is an operational objective.

As regards the Cooperation Agreement 2008-2013 in particular and local environmental enforcement in general it may be useful within this framework to make mention of the White Paper 'Internal Reform of the Federated State'¹³ of 8 April 2011. This reads as follows "In the frame of the Cooperative Agreement on the Environment, which runs until 2013, approximately 25 million euros is allocated to municipal and provincial authorities and questions are asked about the limited added value in relation to the planning burden which is deemed excessive. Given the maturity of the local environmental policy and the need for investment resources for sewage systems and operational resources for enforcement, the municipal share of the agreement is shifted to sewage systems for municipalities. The provincial share of the agreement, including the resources of the addendum of the agreement on municipalities, shall shift to enforcement by the Flemish Region instead of by municipalities or provinces." The precise impact and implications of this provision in the White Paper 'Internal Reform of the Federated State' for local enforcement are yet to become clear. The Flemish High Council of Environmental Enforcement has examined various possible scenarios regarding the role of the local supervisor in the enforcement landscape as a whole. In order to gain more clarity about the subject, the study 'Local Environmental Enforcement. The Implementation of the Environmental Enforcement Act at Municipal Level' was contracted out and the congress on Local Environmental Enforcement was organised in 2012.

In the Policy Paper on Environment and Nature 2011-2012 the Flemish Minister for Environment, Nature and Culture, Joke Schauvliege, refers in the context of environmental enforcement to the Flanders in Action key project 51-2 'Fully implementing the Environmental Enforcement Act with attention to the evaluation tracks and the impact thereof'. Reference is made to the fact that during the past period the focus was mainly on the overall evaluation of environmental enforcement regulations. To this end, the Government of Flanders adopted a concept memorandum in mid-2012 containing several proposals for amendments to the regulations, as well as policy recommendations. Special attention was also devoted to the new instrument 'administrative transaction', the procedure of which was embedded in the Environmental Enforcement Act and the Environmental Enforcement Decree. Even after 2012, continued attention will be

¹³ The entire White Paper 'Internal Reform of the Federated State' of 8 April 2011 can be consulted at the following URL: http://ikdoe.vlaandereninactie.be/wp-content/uploads/2011/04/Witboek_8april2011.pdf



paid to the application and effect of the Environmental Enforcement Act. The recommendations that were formulated during the 2012 overall evaluation will crystallise in concrete amendments to the Flemish Parliament Act and Decree in 2013. In addition, the administrative enforcement will be further optimised, among other things through the development and practical implementation of the administrative transaction system. As far as the policy recommendations are concerned, the monitoring will be done partially by the LNE working group 'Enforcement' (such as further decriminalisation, terms for penalty, alignment with permanent environmental permit and implementation of IED,..) and partially by the Flemish High Council of Environmental Enforcement (recommendations regarding local supervision, programme-based enforcement, cooperation between enforcement bodies, enforceability of regulations,...). To that end, these two bodies will exchange information. Moreover, the policy paper indicates that the section 'Environmental Enforcement' in the White Paper on the Internal Reform of the Federated State will be implemented by laying down the competences of the different levels of government in terms of enforcement in the Environmental Enforcement Act in conformity with the White Paper. This new division of competences will become effective in the autumn of 2013.

It should be clear that the Flemish High Council of Environmental Enforcement can and should play a role in the support of the Government of Flanders and the Flemish Minister for Environment, Nature and Culture in the implementation of the Coalition Agreement, the Policy Plan and the Policy Paper. As described earlier, the VHRM also fulfils a crucial role in the design of the policy-based framework, namely by formulating advisory opinions (upon request or on its own initiative) and by annually drawing up the environmental enforcement report. The Environmental Enforcement Reports 2009, 2010 and 2011 contain, among other things, policy recommendations at the strategic level, but also operational recommendations for the environmental enforcement actors themselves.

**Evaluation of the regional
environmental enforcement
policy**

NATURE & FORESTS

*Grass path in Grotenhout in
Lille-Vosselaar.*

Photo © Lamberts Jan/ANB



2. Evaluation of the regional environmental enforcement policy

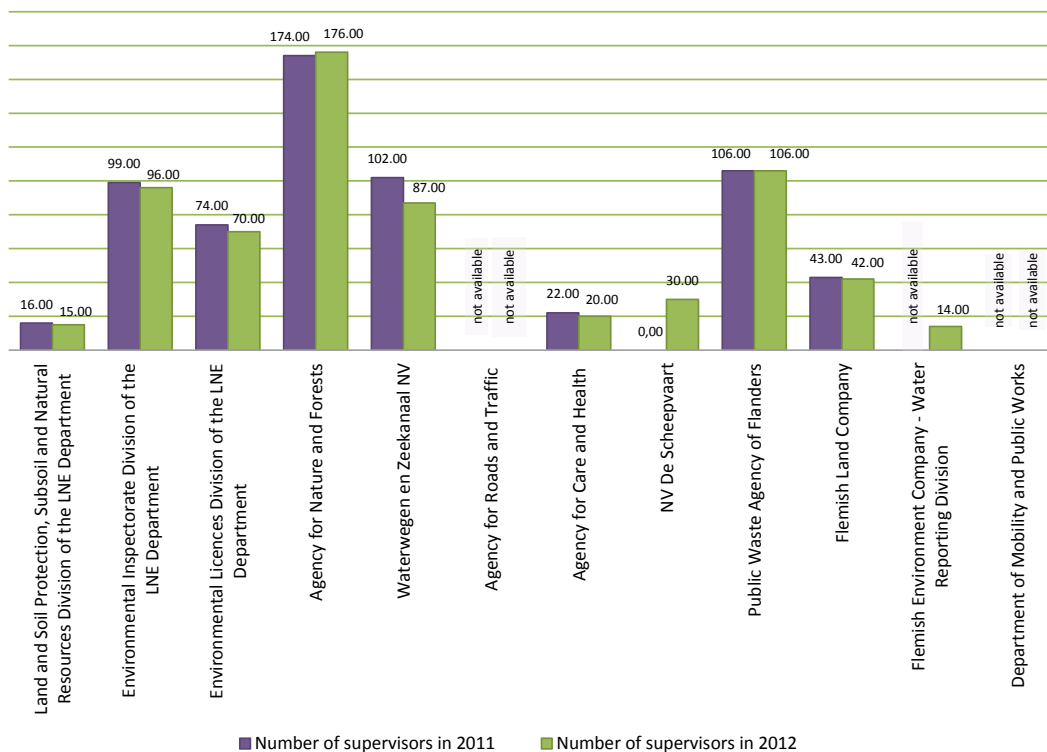
The purpose of this chapter is to evaluate the Flemish environmental enforcement policy from 1 January 2012 through 31 December 2012. It reports on the enforcement and supervisory activities of the different actors who were active in the Flemish Region in 2012. Whenever possible and relevant, a comparison will also be made in terms of percentage with the data which the Flemish High Council of Environmental Enforcement collected in the Environmental Enforcement Report 2011.

2.1 Evaluation of the regional environmental enforcement policy

2.1.1 Regional supervisors

The Environmental Enforcement Act determines in Article 16.3.1 that the personnel of the department and the agencies coming under the policy areas of Environment, Nature and Energy, Welfare, Public Health and Family, and Mobility and Public Works can be appointed as supervisors by the Government of Flanders. It concerns the following enforcement actors: the Secretary General of the Department of Environment, Nature and Energy (LNE); the Environmental Inspectorate Division of the LNE Department; the Environmental Licences Division of the LNE Department; the Land, Soil Protection, Subsoil and Natural Resources Division of the LNE Department; the Flemish Land Agency; the Flemish Environment Agency; the Agency for Care and Health; the Agency for Nature and Forests; the Public Waste Agency of Flanders, and Waterwegen en Zeekanaal nv. Since 2010, following the introduction of the amendment decree of the Government of Flanders of 19 November 2010, the Agency for Roads and Traffic, the Maritime Access Division of the Department of Mobility and Public Works and nv De Scheepvaart can appoint supervisors as well. Article 16.3.2 of the Environmental Enforcement Act also stipulates that only persons who have the necessary qualifications and characteristics to adequately perform the supervisory duties can be appointed supervisors.

In the questionnaire the regional supervisory bodies were therefore asked about the number of supervisors, appointed by the Government of Flanders, they had at their disposal in 2012. The graph below shows the number of supervisors used by the regional enforcement actors in 2012. The data from the Environmental Enforcement Report 2011 also made it possible to compare the total number of supervisors available to the supervisory body in 2011 and 2012. This ratio is also represented in the graph below.



Graph 1 Number of supervisors per regional enforcement actor in 2011 and 2012

In order to consider the above graph in the right context, the following marginal comments need to be made first:

- ▶ In 2012, the Secretary General of the Department of Environment, Nature and Energy did not carry out any supervision, since no exceptional circumstances occurred during the survey period which required his authority. Therefore, he is not included in the tables and graphs.
- ▶ The VHRM did not receive any response from the Department of Mobility and Public Works for the Environmental Enforcement Report 2011, nor for the present environmental enforcement report.
- ▶ The number of supervisors appointed within the Agency for Roads and Traffic was communicated neither for 2011 nor for 2012.
- ▶ For the Environmental Enforcement Report 2012 the Flemish Environment Agency reported on the enforcement activities of the Water Reporting Division and not of the Operational Water Management Division¹⁴. The questionnaire was not completed for the Environmental Enforcement Report 2011.

¹⁴ The questionnaire was not completed by this division because in 2012 few activities were carried out within the framework of the in-house supervisory duties. However, in 2012 further cooperation took place with local supervisors and especially with the Flemish Land Agency to continue to tackle cases regarding illegal dumping and fertiliser pollution. Work was also done on an improved enforcement of town planning infringements with a detrimental impact on water management. However, this does not fall within the scope of the Environmental Enforcement Act.

- ▶ The Agency for Nature and Forests reported a total number of 176 appointed supervisors for 2012. However, this number does not include the 92 supervisors of the Policy Division of the Agency who only have a right of access, but are not authorised to identify environmental infringements or environmental offences.

Regional enforcement actor	Number of supervisors in 2011	Number of supervisors in 2012
Land and Soil Protection, Subsoil and Natural Resources Division of the LNE Department	16.00	15.00
Environmental Inspectorate Division of the LNE Department	99.00	96.00
Environmental Licences Division of the LNE Department	74.00	70.00
Agency for Nature and Forests	174.00	176.00
Waterwegen en Zeekanaal nv	102.00	87.00
Agency for Roads and Traffic	-	-
Agency for Care and Health	22.00	20.00
nv De Scheepvaart	0.00	30.00
Public Waste Agency of Flanders	106.00	106.00
Flemish Land Agency	43.00	42.00
Flemish Environment Agency – Water Reporting Division		14,00
The Department of Mobility and Public Works		
Total	636.00	656.00

Table 1 Number of supervisors per regional enforcement actor in 2011 and 2012

It can be deduced from the above table that a total of 656 regional supervisors were appointed in 2012. This is an increase compared to the 636 regional supervisors in 2011. However, this increase is not proportionally spread over the different regional actors. On the contrary, the number of supervisors declined for most regional supervisory bodies. Their number only increased within the Agency for Nature and Forests and nv De Scheepvaart¹⁵.

Just like in the previous environmental enforcement reports, large differences can be observed in the number of appointed supervisors. Certain bodies only have a limited number of supervisors, whereas others have a large number of employees at their disposal who have been appointed as supervisors. This has to do with the type of supervisory duties and the way in which this supervision is organised. An important element in this is the distinction between ‘many eyes in the field’ and specific competences and the distinction between employees dedicating a limited amount of time to enforcement and employees being engaged full-time in enforcement. By not specifying in the Environmental Enforcement Act whether regional supervisors are to be engaged full-time in environmental law enforcement nor specifically defining the required qualifications and characteristics of these supervisors, the legislator has allowed the different regional bodies to decide for themselves how they want to implement their supervisory duties.

A positive element is the fact that three years after the entry into effect of the Environmental Enforcement Act all the regional bodies, with the exception of the Agency for Roads and Traffic and the Maritime Ac-

¹⁵ NV De Scheepvaart had already appointed 30 supervisors in 2011, but they did not yet have the required proof of identity at the time.

cess Division of the Department of Mobility and Public Works¹⁶, which were given competences regarding environmental enforcement through this Flemish Parliament Act, have actually appointed supervisors.

2.1.2 Efforts related to environmental enforcement duties

As indicated above, the way in which the regional enforcement bodies organise their enforcement duties varies strongly. Some actors have appointed a lot of supervisors, while the environmental enforcement duties are rather limited. However, these appointments may be necessary because enforcement (either on a limited basis or not) can be part of the duties of each staff member. There are also bodies where the supervisors are engaged almost full-time in the implementation of environmental enforcement duties. This means that the number of appointed supervisors does not provide an accurate picture of the enforcement duties that are actually carried out. As mentioned before, the Environmental Enforcement Act does not specify how many FTEs should be dedicated to enforcement duties. Nevertheless, the number of FTEs can provide a clearer and more balanced picture of the actual efforts that are made in the field of environmental enforcement.

The following table not only gives a picture of the total amount of time the regional supervisors dedicated to environmental enforcement duties - in FTEs - in 2012, but also of the number of FTEs that were dedicated to the administrative support of environmental enforcement duties by non-supervisors. The administrative support of environmental enforcement duties pertains to the amount of time dedicated within the framework of duties relating to environmental enforcement by non-supervisors. In this context reference can be made, for instance, to policy-based support (drawing up reports and programmes), purely administrative tasks (drawing up correspondence, organising inspections), and legal support (developing internal guidelines for supervisors). By way of comparison, the relevant data from 2011 are shown in the table below.

A number of regional enforcement actors could not indicate how many FTEs were dedicated to environmental enforcement duties. The Environmental Licences Division, for instance, reported that no specific time registration was done. In this context nv De Scheepvaart reported that the environmental enforcement duties which are carried out by the supervisors are part of an overall package of supervisory duties, as specified in the Shipping Regulations of 1935. The environmental enforcement duties are carried out at the same time as the other day-to-day duties of the dike inspectors. In addition, the administrative and technical support of the supervisors was divided within nv De Scheepvaart between the Facility Division and the Waterway Management Division. It was impossible to make an accurate time estimation of this administrative support by non-supervisors.

With regard to the 40.40 FTEs that were dedicated to environmental enforcement duties by supervisors of the Agency for Nature and Forests it should be communicated that this includes 3.8 FTEs of administrative support and 3.3 FTEs dedicated by foresters with temporary nature inspection duties, but does not include the FTEs dedicated by the Management Division (foresters, regional manager,...). This amount of time dedicated is estimated at 8 FTEs, but cannot be calculated accurately because the parties concerned usually carry out their management and supervisory duties at the same time.

¹⁶ Respectively because of the non-reporting of the number of appointed supervisors and because of the non-response.

Regional enforcement actor	Total FTEs dedicated to environmental enforcement duties		FTEs dedicated by supervisors to environmental enforcement duties		FTEs dedicated by non-supervisors to administrative support of environmental enforcement duties	
	2011	2012	2011	2012	2011	2012
ALBON	3.15	2.70	2.95	2.50	0.20	0.20
AMI	89.20	84.30	78.90	74.00	10.30	10.30
AMV	-	-	-	-	-	-
ANB	39.60	40.40	38.60	40.40	1.00	0.00
AWZ	2.00	2.00	1.00	1.00	1.00	1,00
AWV	-	-	-	-	-	-
AZG	1.12	0.89	0.98	0.78	0.14	0.11
nv De Scheepvaart	-	-	-	-	-	-
OVAM	8.11	6.80	5.60	4,00	2.51	2.80
VLM	40.00	33.20	37.50	26.00	2.50	7.20
VMM – Water Reporting Division		0.20		0.10		0,10
MOW						
Total	183.18	170.49	165.53	148.75	17.65	21.71

Table 2 Efforts related to environmental enforcement duties in 2011 and 2012

Again, it can be concluded for 2012 that there is a great difference between the various regional supervisory actors in terms of the number of FTEs that were dedicated to enforcement duties. Within the Environmental Inspectorate Division, for instance, each supervisor dedicated an average of 0.88 FTEs to enforcement duties (both by supervisors and as administrative support)¹⁷. It concerns 0.77 FTEs of supervisors and 0.11 FTEs of administrative support. Within the Flemish Land Agency this ratio was at 0.79 in 2012, whereas within the Agency for Care and Health and the Agency Waterwegen en Zeekanaal nv this ratio was 0.04 and 0.02 FTEs respectively. This fact as well can be considered in the context of the distinction between 'many eyes in the field' and specialisation and the distinction between working almost full-time on environmental enforcement and performing environmental enforcement duties as a small part of a much larger set of duties.

In comparison to 2011, the total number of FTEs dedicated to environmental enforcement duties decreased in 2012. This decrease is apparent from the number of FTEs which regional supervisors dedicated to environmental enforcement duties, since the number of FTEs dedicated to administrative support by non-supervisors increased in comparison with 2011. Despite the fact that, in 2012, 20 regional supervisors more were appointed than in 2011, these supervisors dedicated in total almost 17 FTEs less to environmental enforcement duties.

This decline in the number of FTEs supervisors dedicated to environmental enforcement duties can be observed for each enforcement actor, with the exception of the Agency for Nature and Forests and the Agen-

¹⁷ Total number of FTEs dedicated to environmental enforcement duties compared to the number of appointed supervisors.

cy Waterwegen en Zeekanaal nv. Contrary to the number of FTEs dedicated by supervisors, the number of FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors rose in 2012. This rise can mainly be recorded within the Flemish Land Agency where this share grew by almost 5 FTEs. It should be remarked here that within the Flemish Land Agency the administrative support is provided by supervisors. However, these supervisors were included in the share of administrative support, because the implementation of environmental enforcement duties is only a small part of their package of duties and they mainly perform administrative and supporting tasks.

In order to be better able to interpret the efforts of the regional supervisory bodies in the field of environmental enforcement in their context, it was asked how many environmental enforcement inspections were carried out by these supervisors between 1 January 2012 and 31 December 2012. The definition of 'inspection' is as follows: "An inspection in the context of environmental enforcement is to examine with a legal and/or a natural person who is bound by environmental law obligations, whether or not this legal and/or natural person actually complies with these legal obligations. This can be broken down into on-site inspections or inspections of documents".¹⁸ In order to obtain a more detailed picture of the number of inspections, the regional environmental enforcement actors were explicitly asked to make a distinction between the number of environmental enforcement inspections carried out by the supervisors and the number of inspections - supervised¹⁹ by these supervisors - carried out by accredited/certified institutions or recognised experts. It should be added in this context that not each regional environmental enforcement actor has the authority to have such inspections carried out and to supervise them. The table below gives an overview of the total number of environmental enforcement inspections carried out by the supervisors and the total number of supervised inspections (if applicable) in 2012.

Regional enforcement actor	Number of environmental enforcement inspections carried out by supervisors	Number of inspections - supervised by supervisors - carried out by accredited/certified institutions or recognised experts
ALBON	263.00	/
AMI	11,780.00	Not applicable
AMV	409.00	/
ANB	7,754.00	0.00
AWZ	-	/
AWV	/	/
AZG	4,613.00	0.00
nv De Scheepvaart	-	2.00
OVAM	700.00	118.00
VLM	3,209.00	0.00
VMM – Water Reporting Division	22.00	0.00
MOW		
Total	28,750.00	120.00

Table 3 *Total number of environmental enforcement inspections carried out by supervisors and total number of supervised inspections in 2012*

¹⁸ VHRM glossary, page 10: <http://www.vhrm.be/voor-de-toezichthouder/glossarium/>

¹⁹ 'Supervised' means that the supervisors monitor the quality of the inspections by certified organisms and intervene if necessary.

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

- ▶ The Agency for Roads and Traffic reported that official reports were drawn up in 2012, but did not mention the number of performed environmental enforcement inspections.
- ▶ NV De Scheepvaart reported that, for the time being, no targeted environmental enforcement inspections had been carried out in 2012. The official reports that were drawn up in 2012 each time pertained to offences that were identified in implementation of the regular day-to-day duties of the supervisors.
- ▶ In contrast to the reporting for the Environmental Enforcement Report 2011, the Environmental Licences Division did not distinguish, for the present report, between the number of environmental enforcement inspections carried out by supervisors and the inspections that were supervised by in-house supervisors, but carried out by accredited/certified institutions or external experts (cf. inspections of liquid and gaseous fuel engineers).
- ▶ The Agency Waterwegen en Zeekanaal nv responded that environmental enforcement inspections are embedded in the daily inspection of/along waterways and that no specific action was taken in terms of environmental enforcement.
- ▶ The 22 inspections indicated by the Flemish Environment Agency concern inspections that were carried out in cooperation with other supervisors who subsequently took action (official report, exhortation, administrative measure, identification report,...) themselves when a breach was identified.
- ▶ The OVAM indicated that, apart from the 700 environmental enforcement inspections carried out by its own supervisors and the 118 supervised inspections, support was given during 613 environmental enforcement inspections that were carried out by external inspection services, the police, Customs,...

It can be concluded from the above table that, in 2012, the regional supervisors carried out 28,750 environmental enforcement inspections and supervised another 120 inspections. The number of inspections carried out by supervisors themselves has increased remarkably compared to 2011 (20,659 inspections). This increase can be credited to the Agency for Care and Health, amongst others. While this actor performed 39 inspections in 2011, this number climbed to 4,613 in 2012. This has to do with the fact that the water analyses of swimming pools, swimming ponds and the coast were also counted for the present environmental enforcement report, since these are also inspections. Vlareme II²⁰ imposes quality requirements on swimming pools and swimming ponds that are inspected at specific points in time. These inspections are carried out on a monthly basis for covered circulation pools, hot whirlpools, plunge pools and therapy pools, on a two-monthly basis for uncovered circulation pools, and starting from the week preceding the bathing season and from then onwards at least every 14 days during the bathing season for coastal, bathing and recreational waters²¹.

A strong increase can also be observed for the Flemish Land Agency, namely from 377 inspections in 2011 to 3,209 inspections in 2012. This can be explained by the fact that for the Environmental Enforcement Re-

20 Vlareme II compiles all environmental legislation applicable to companies with permit requirements (including IPPC and other applicable EU-directives). Vlareme I sets out a classification for the different sectoral activities and installations that need an environmental permit (class 1 en 2) or a registration (class 3).

21 Cf. art. 2.3.7.3.1, art. 5.32.9.2.2.§4.1°, art. 5.32.9.3.2.§4.1°, art. 5.32.9.4.2. §1, art. 5.32.9.5.1. §1quater, art. 5.32.9.7.2.§4.1° and art. 5.32.9.8.2. §1.

port 2011 only those inspections were considered that were sanctioned under the Environmental Enforcement Act, whereas the 3,209 inspections also include those inspection processes that were sanctioned under the Flemish Parliament Act on Manure.

In 2012, the supervisors of the Environmental Inspectorate Division carried out 11,780 inspections. The Environmental Inspectorate Division as well takes samples (or has them taken in the presence of a supervisor), carries out measurements (or has them carried out under the supervision of a supervisor) and has samples analysed. The results were tested against the standards by the supervisors. However, the analyses and these tests were not reported as separate inspections. The Environmental Inspectorate Division indicated that it was impossible to report on the FTEs that were used by the recognised laboratories or experts working on its authority.

However, the number of supervised inspections fell from 631 in 2011 to 120 in 2012. While the Environmental Licences Division still supervised 428 inspections for the Environmental Enforcement Report 2011, this distinction was no longer made for the present environmental enforcement report. This number decreased from 111 to 0 within the Flemish Land Agency as well. On the authority of the Flemish Land Agency, VITO (Flemish Institute for Technological Research) carried out 117 inspections of recognised laboratories (ring testing) in 2012 and the Flemish Land Agency itself carried out inspections of the persons who took soil samples on its authority for measuring nitrate residue values. These inspections were classified as supervised inspections for the Environmental Enforcement Report 2011.

Just like with the number of appointed supervisors and the number of FTEs dedicated to enforcement duties, a large diversity can be observed between the different regional supervisory bodies in terms of the number of inspections they carried out. For this reason, the table below not only reflects the number of supervisors, the total number of FTEs dedicated to enforcement duties²² and the number of environmental enforcement inspections performed by the supervisors, but also makes a comparison by dividing the number of performed environmental enforcement inspections by the number of supervisors, in order to present the average number of inspections per supervisor. Because an inspection is often more than just carrying out the inspection and visiting the site concerned the number of inspections carried out by supervisors will be divided by the total number of FTEs dedicated to enforcement duties per regional body, in order to present an average number of inspections per FTE and to achieve a more balanced picture. In this way account is also taken of the preparations of each inspection and the administrative processing. In order not to give a distorted picture, the number of inspections will only refer to those inspections that were actually carried out by the appointed supervisors and not to those inspections which were supervised by the supervisors.

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

Regional enforcement actor	Number of supervisors	Total number of FTEs	Number of inspections carried out by supervisors	Average number of inspections per supervisor	Average number of inspections per FTE	Average number of inspections per FTE by supervisors
ALBON	15.00	2.70	263.00	17.53	97.41	105.20
AMI	96.00	84.30	11,780.00	122.71	139.74	159.19
AMV	70.00	-	409.00	5.84	-	-
ANB	176.00	40.40	7,754.00	44.06	191.93	191.93
AWZ	87.00	2.00	-	-	-	-
AWV	-	-	/	-	-	-
AZG	20.00	0.89	4,613.00	230.65	5,183.15	5,914.10
nv De Scheepvaart	30.00	-	-	-	-	-
OVAM	106.00	6.80	700.00	6.60	102.94	175.00
VLM	42.00	33.20	3,209.00	76.40	96.66	123.42
VMM – Water Reporting Division	14.00	0.20	22.00	1.57	110.00	220.00
MOW						
Average total	656.00	170.49	28,750.00	43.83	168.63	193.24

Table 4 Efforts related to environmental enforcement duties 2012

The above table shows that, in 2012, 43.83 inspections were carried out on average per supervisor. However, when considering this fact for each separate regional supervisory body, the picture is very diversified. In 2012, a supervisor of the Agency for Care and Health carried out on average no less than 230 inspections, whereas this share was 1.5 inspections per supervisor with the Flemish Environment Agency, for instance. This discrepancy can be explained by the fact that for some supervisors environmental law enforcement is an exclusive duty, whereas for other supervisors enforcement is only a small part of their set of duties.

The average number of inspections per FTE is the total number of performed inspections compared with the total number of FTEs dedicated to enforcement duties. This gives a more accurate picture of the efforts of regional enforcement actors in 2012. The supervisors carried out an average of 168.63 inspections per FTE. However, this average is raised by the 5,183.15 inspections that were carried out per FTE by the supervisors of the Agency for Care and Health. Except for this peak, the Agency for Nature and Forests has a very high average number of inspections per FTE, namely 191.93, followed by the Environmental Inspectorate Division with an average of 139.74 inspections per FTE. With the other supervisory bodies, this average amounts to around 100 inspections per FTE.

On the basis of the figures from the Environmental Enforcement Report 2011 a comparison can be made between the average number of inspections per supervisor in 2011 and 2012 and the average number of inspections per FTE. Just like in the table above the number of inspections will only pertain to those inspections that are actually carried out by the appointed supervisors and not to those inspections that were supervised by these supervisors. In addition, the number of FTEs relates to the total number of FTEs

dedicated to enforcement duties, which means both the number of FTEs dedicated to enforcement duties by the supervisors and the FTEs dedicated to the administrative support of environmental enforcement duties²³. As indicated earlier, the idea is to provide a fuller picture of the implementation of an inspection.

In the table below a comparison is made between the average number of inspections per regional supervisor in 2011 and 2012 and between the average number of inspections per FTE in 2011 and 2012. In addition, a separate graph is included of the average number of inspections per FTE in 2011 and 2012.

Regional enforcement actor	Average number of inspections per regional supervisor		Average number of inspections per FTE	
	2011	2012	2011	2012
ALBON	16.25	17.53	82.54	97.41
AMI	120.43	122.71	133.67	139.74
AMV	1.64	5.84	-	-
ANB	42.44	44.06	186.46	191.93
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	1.77	230.65	34.82	5,183.15
nv De Scheepvaart	-	-	-	-
OVAM	5.24	6.60	68.43	102.94
VLM	8.77	76.40	9.43	96.66
VMM – Water Reporting Division		1.57		110.00
MOW	-		-	
Average total	32.48	43.83	112.77	168.63

Table 5 Comparison of the average number of inspections per regional supervisor and the average number of inspections per FTE in 2011 and 2012

The data in the above table show that the average number of inspections per regional supervisor increased in 2012, namely from 32.48 inspections in 2011 to 43.83 inspections in 2012. For the majority of the enforcement actors the average number of inspections per supervisor remains practically the same, even though a small increase can be observed with all the regional supervisory bodies. The overall increase can mainly be attributed to and be explained by the activities of the Flemish Land Agency, the Environmental Licences Division and the Agency for Care and Health.

- ▶ As mentioned earlier, the Agency for Care and Health has also counted the water analyses of swimming pools, swimming ponds and the coast in the total number of performed inspections (contrary to the reporting for the previous environmental enforcement reports) for the present environmental enforcement report. This means that this actor not only performed a very large number of inspections compared to other regional enforcement actors, but also compared to

²³ It was already indicated that in the survey for the Environmental Enforcement Report 2010 the questioned environmental enforcement actors gave different interpretations for the concept 'administrative support'. Therefore, some caution is to be exercised when interpreting these 2010 data, since they cannot be compared just like that for all the actors.

its own efforts in 2011. Consequently, the average number of inspections per supervisor rose from 1.77 in 2011 to 230.65 in 2012.

- ▶ Within the Environmental Licences Division the number of inspections per supervisor increased from 1.64 in 2011 to 5.84 in 2012. As said earlier, the reporting for the present environmental enforcement report did not distinguish, however, between the inspections carried out by the supervisors themselves and the inspections they supervised, which has an impact on the reported total number of performed environmental enforcement inspections.
- ▶ The average number of inspections per supervisor also rose within the Flemish Land Agency, namely from 8.77 in 2011 to 76.40 in 2012. Here, account is to be taken of the fact that the Environmental Enforcement Report 2011 only considered those inspections that were sanctioned under the Environmental Enforcement Act, whereas the reporting for the present environmental enforcement report also includes the inspections that are sanctioned under the Flemish Parliament Act on Manure.

The above table also shows that for each enforcement actor the average number of inspections per FTE rose in 2012, compared to 2011. This also explains the strong growth in the average total of 112.77 inspections per FTE to 168.63 inspections per FTE.

When focussing on the separate supervisory bodies, the large increase in the average number of inspections per FTE within the Agency for Care and Health and the Flemish Land Agency is striking. The aforementioned explanations also apply to this comparison. The efforts of the Public Waste Agency of Flanders can be emphasised in this context as well. The average number of inspections per FTE of this supervisory body indeed rose from an average of 68.43 inspections per FTE to an average of 102.94 inspections per FTE. This can be explained by the nature of the inspections. In 2012, OVAM organised two actions which mainly focused on administrative, less time-consuming inspections.

2.2 Evaluation of the environmental enforcement policy pursued by the police

To draw up the present environmental enforcement report the Flemish High Council of Environmental Enforcement again surveyed the federal and local police about their environmental enforcement activities. It was asked, among other things, how many official reports were drawn up by the federal and local police for environmental offences in the Flemish Region following reports, complaints or offenders being caught in the act between 1 January 2012 and 31 December 2012. More detailed information was also asked about the specific activities of the federal police in the context of environmental enforcement and about the activities of the supervisors appointed within the local police districts.

2.2.1 In general

The table below gives an overview of the types of official reports that were drawn up with regard to the environment by police forces in 2012. The figures include both the initial official reports and the simplified official reports.²⁴ The fact that the simplified official reports are included as well explains the difference between the number of official reports drawn up by the police forces and the number of dossiers - drawn up by the police forces - received by the public prosecutor's offices (cf Chapter 4.1). The figures originate from the General National Database. The General National Database (Algemene Nationale Gegevensbank/ANG) is the whole of information systems of the integrated police force, the purpose of which is to support the duties of the judicial or administrative police, so as to guarantee a maximally structured and secured information management.²⁵

Type of breach	Units			Total
	Federal police	Local Police	Other	
Waste by professional person	38	424	4	466
Waste shipment	20	100	0	120
Waste: licence-recognition	2	58	3	63
Waste by private person	80	3,248	1	3,329
Air pollution	3	453	0	456
Water pollution	12	205	2	219
Soil pollution	3	106	0	109
Environment Noise pollution	2	392	0	394
Environment flora fauna Destruction	0	291	0	291
Environment flora fauna Animal welfare	6	793	1	800
Environment flora fauna Nature protection	4	239	3	246
Environment flora fauna Licence recognition	10	48	0	58
Other phenomena linked to Environment	238	10,646	47	10,931
Total	418	17,003	61	17,482

²⁴ Simplified official reports are mainly drawn up for non-serious breaches, for instance with unknown offenders, which are not systematically referred to the public prosecutor's office.

²⁵ <http://www.lokalepolitie.be/5412/algemene-informatie/199-de-algemene-nationale-gegevensbank.html>

Table 6 Official reports drawn up by police forces for environmental offences in the Flemish Region in 2012

In total, the police forces drew up 17,482 official reports in the Flemish Region in 2012. More than 97% of these official reports were drawn up by the local police and less than 3% by the federal police.

The majority of the identified breaches, namely 62.5% referred to 'other phenomena linked to the environment'. This type of breach includes, among other things, breaches that do not fall within the scope of the Environmental Enforcement Act, such as breaches in the framework of spatial planning or fireworks fraud. The second largest category of breach is 'waste by private person'. This category represents 19.04% in the total number of identified breaches.

In comparison with the data from the Environmental Enforcement Report 2011 a decrease can be observed in the number of official reports drawn up, namely from 19,120 in 2011 to 17,482 in 2012. The ratio between the reporting authority (federal police, local police and other police services) remains more or less the same, however, just like the ratios between the different types of breaches.

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

The Flemish High Council of Environmental Enforcement also surveyed the federal police about its activities in the field of environmental enforcement for the Environmental Enforcement Report 2012. It was asked, among other things, how many official reports were entered in the General National Database on Environmental Offences in 2012 where the identifying unit belonged to the federal police. These data were presented in table 6 under 2.2.1. It was also asked, for instance, how many people within the federal police force had been actively involved in environmental law enforcement in the Flemish Region in 2012.

Within the federal police force 135 people were part of the Environmental Network in Flanders in 2012. The idea behind this Environmental Network is to exchange information about environmental breaches, offer mutual support, develop best practices together, and conduct large-scale investigations in an effective and efficient way. This network also includes 243 members of local police forces. However, the figure of 135 federal police staff who are actively involved in environmental enforcement is both an overestimation and an underestimation, since this figure is an extraction from the Environmental Network database. Not all people included in this database are still actively involved in environmental enforcement. Conversely, it is also true that not all staff within the federal police who are involved in environmental enforcement are included in this network. The figure of 135 people should therefore be regarded as indicative only.

It is more accurate to say that in 2012 49 FTEs within the federal police force were actively involved in environmental enforcement in the Flemish Region. This concerned 8 FTEs within the Environment Division of the Directorate of Crime against Goods, 32 FTEs of research capacity within the Federal Judicial Police and 9 FTEs of phenomenon coordinators. These phenomenon coordinators, amounting to 19 in total, examine and monitor the phenomenon 'environmental crime'.

The federal police deal with supra-local phenomena that meet the definition of serious environmental

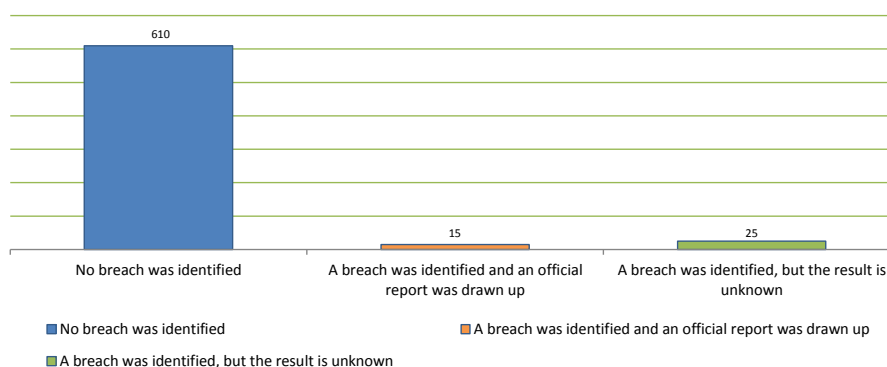
crime. This includes, among other things, the repeated and systematic non-compliance with legislation and other legal provisions; a strong connection with fraud; activities that take place on an organised basis, mostly within companies; activities with a supra-regional spread and international branches;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

In 2012, a total of 418 initial official reports were entered in the General National Database on Environmental Offences, and this only on the territory of the Flemish Region and where the identifying unit belonged to the federal police force. These reactive environmental enforcement identifications were made following reports, complaints or offenders being caught in the act. These official reports did not only refer to environmental offences, but also to environment-related breaches.

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

In addition to these reactive inspections, the federal police also carried out 650 proactive inspections in the framework of waste shipments on the territory of the Flemish Region in 2012. Within the federal police force it was decided to focus on waste which represents a serious threat to public health or the environment, and which generates huge (illegal) profits. This focus on inspections of waste shipments by the federal police is related to the National Safety Plan 2012-2015²⁶ in which the federal government has decided to prioritise waste management fraud, among other things.

The graph below gives an overview of the 650 inspections of waste shipments that were carried out by the federal police in 2012.



Graph 2 *Proactive inspections of waste shipments on the territory of the Flemish Region in 2012*

No breach was identified during 610 inspections. During 40 of these inspections breaches were identified. For 15 of these breaches an official report was immediately drawn up at the time of completion of the ECO form²⁷. It is possible that afterwards, after the data were checked by the administration and breaches were identified after all, more official reports were drawn up. However, the federal police itself does not have any insight into this. This was entered in the graph above as 'A breach was identified, but the result

²⁶ <http://www.polfed-fedpol.be/pub/pdf/NVP2012-2015.pdf>

²⁷ For each inspection of a waste shipment (including manure), the police officer draws up a document, called ECO form for waste (EFW). With this document part of the waste stream can be made visible.

is unknown'. After the ECO form for waste has been completed, it is submitted to the Environment Service of the Federal Judicial Police for further analysis. This Service checks the data. A number of data regarding high-risk waste streams are exchanged with the competent administrative services. Based on additional information and administrative data, breaches can therefore still be identified a posteriori, which will result in initial official reports. In 2012, it concerned 25 inspections.

It is apparent from the Environmental Enforcement Reports 2010 and 2011 that the number of proactive inspections decreased from 1,352 in 2010 to 724 in 2011 and to 650 in 2012.

In both 2010, 2011 and 2012 the enforcement activities of the federal police were focused on inspections of waste shipments. These activities refer to the National Safety Plan 2008-2011²⁸ and the National Safety Plan 2012-2015. The National Safety Plan defines the strategy to be followed by the Ministers for Foreign Affairs and Justice with regard to safety. It stipulates that a number of crime phenomena will be dealt with as a priority. It also determines the contribution to be made by the police services to address these phenomena.

One of the crime phenomena to be tackled as a priority regards (organised) environmental crime, which was defined as any form of illegally harming (laid down in regulations or legal provisions at the regional, federal, European or international level) the environment or any attempt made thereto through destruction, pollution, etc. In the National Safety Plan 2008-2011 this approach to environmental crime further concentrates on waste fraud or the illegal harming of the environment through the non-ecological processing, removal (dumping, discharge) or mixing of waste. In the National Safety Plan 2012-2015 the focus on waste shipments can be related to waste management fraud as a priority crime phenomenon.

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

The aforementioned general section (2.2.1) on the police forces discusses the official reports that were drawn up by the local police and the federal police in 2012 with regard to a specific environmental theme. However, the activities of the local police supervisors are treated in this separate chapter, after the activities of the federal police. This has to do with the fact that the local police have distinct duties with regard to environmental law enforcement. On the one hand, police officers have been appointed as supervisors within a police district in some cities and municipalities. On the other hand, local police forces are in charge of basic police services and more specifically carry out all duties of the administrative and judicial police that are necessary to manage local events and phenomena that occur on the territory of the police district, as well as to fulfil some police duties of a federal nature. In this context they naturally enforce environmental law, but not as supervisors under the Environmental Enforcement Act. Within various police districts specialised environmental units can be set up or it can be opted to have one or more members of staff specialise in environment-related matters. These staff members are not always required to have supervisor status; they can also just work in the capacity of judicial police officers. It should also be mentioned that 243 people from the local police are part of the Environmental Network as described earlier with regard to the federal police.

28 <http://www.polfed-fedpol.be/pub/pdf/NVP2008-2011.pdf>

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

Besides the appointment of a municipal supervisor among the municipality's own staff or by an intermunicipal association, it can be opted, possibly via a cooperation agreement, to appoint supervisors among the local police force to perform municipal environmental enforcement activities. Local police supervisors are, just like local supervisors, appointed within the municipality itself or within an intermunicipal association and assigned to monitor compliance with the following legislation:

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

in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

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

In the survey of police districts, similar to that conducted among municipal supervisors (see 2.3.4.2), questions were asked about the number of inhabitants in the police district, whether the police district has an appointed supervisor at its disposal, the number of, the amount of time dedicated by and the reporting of supervisors and the organisation of the supervisory activities within the local police force, and obviously the number of inspections and identifications carried out, as well as the results linked to these inspections. The result of the performed inspections will be discussed in Chapter 3 'Evaluation of the application of the individual environmental enforcement instruments and safety measures'. This section will focus on the response rate, the number of supervisors appointed within local police districts and the registration with the Environmental Licences Division of the Department of Environment, Nature and Energy, the average amount of time dedicated by these supervisors, the number of inspections carried out following complaints and the number of inspections carried out at own initiative, the average number of inspections per supervisor and the average number of inspections per FTE. Whenever relevant, a comparison will be made between 2011 and 2012 on the basis of the data from the Environmental Enforcement Report 2011.

Response from the local police concerning the request

It was decided in favour of a breakdown by police district population. As a result, 5 police district categories will be used.

The following table gives an overview of the response on the basis of the 5 categories of police districts.

Police districts with a population of:	Number of police districts in the category in question	Number of responding police districts per category in 2012
≤ 24,999 inhabitants	9	8
25,000 - 49,999 inhabitants	68	52
50,000 - 74,999 inhabitants	24	19
75,000 - 99,999 inhabitants	10	7
≥ 100,000 inhabitants	6	5
Total	117	91

Table 7 Categories of Flemish police districts, including number of police districts per category and number of respondents per category

The VHRM received a completed questionnaire from 91 of the 117 police districts²⁹ in the Flemish Region. This is a response rate of almost 78%, which is an increase compared to the response rate of 76.27% for the Environmental Enforcement Report 2011.

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

Article 16§1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy, in short the Environmental Enforcement Decree, stipulates that municipalities are required to have at least 1 supervisor at their disposal within one year after the coming into effect of the aforementioned Decree, which was on 1 May 2010. This can be either a municipal supervisor or a Vlarem officer, or a supervisor or a Vlarem officer of an intermunicipal association, or a supervisor or a Vlarem officer of a police district. Within two years of the coming into effect of this Decree on 1 May 2011, municipalities with more than three hundred Category 2 plants in accordance with Title I of Vlarem or with more than thirty thousand inhabitants if the number of plants is insufficiently known are at least required to have two supervisors at their disposal. This can be either municipal supervisors, police district supervisors or supervisors of intermunicipal associations. Since the possibility exists to appoint supervisors within the police districts, all the police districts in the Flemish Region were asked whether or not a supervisor was appointed within their police district, how many supervisors were appointed and how much time these supervisors dedicated to environmental enforcement duties within the framework of the Environmental Enforcement Act in 2012. The table below gives a general overview.

²⁹ The previous environmental enforcement reports mentioned 118 police districts. Meanwhile, however, two police districts amalgamated in 2012.

	≤ 24,999	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	≥ 100,000	Total
<i>Response</i>	8	52	19	7	5	91
Police district with appointed supervisor	1	12	7	4	2	26
Police district without appointed supervisor	7	40	12	3	3	65
Number of appointed supervisors	3	17	10	6	9	45
Average number of supervisors per police district	3.00	1.42	1.43	1.50	4.50	1.73
Total amount of time dedicated to supervisory duties by supervisors (FTE)	0	5,76	5,70	2,95	5	19,41
of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	0	5.30	4.37	2.10	5	16.77
of which FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors	0	0.46	1.33	0.85	0	2.64
Average amount of time dedicated to supervisory duties per supervisor (in FTEs)	0	0.34	0.57	0.49	0.56	0.43
Police district that has no insight into the amount of time dedicated per supervisor	1	2	1	0	0	4

Table 8 Overview of the appointment of local police supervisors and efforts related to environmental enforcement duties in 2012 (per population)

It can be deduced from the above table that 26 of the 91 responding police districts had a supervisor at their disposal within their own force in 2012. This is 28.57% of the total number of responding police districts.

The total number of appointed local police supervisors - spread over these 26 police districts - amounted to 45 in 2012, which is 1.73 supervisors per police district.

In total, 19.41 FTEs were dedicated to environmental enforcement duties within the police districts that had appointed a supervisor. More than 85% of these FTEs were dedicated by supervisors to environmental enforcement duties under the Environmental Enforcement Act, whereas about 15% was dedicated to administrative support by non-supervisors.

The average amount of time dedicated³⁰ by each local police supervisor to environmental enforcement duties - which also includes the FTEs dedicated to administrative support - amounted to 0.43 FTEs in 2012. This means that the average local police supervisor dedicates just less than half of his or her time to the implementation of environmental enforcement duties under the Environmental Enforcement Act. Since there is an average of 1.73 supervisors per police district with an appointed supervisor, an average amount

³⁰ The average amount of time dedicated per supervisor is the total number of indicated FTEs dedicated to environmental enforcement duties per police district category, divided by the total number of indicated appointed supervisors per police district category.

of time of 0.74 FTEs was dedicated³¹ to enforcement duties in police districts that appointed a supervisor within their own force.

However, this amount of time dedicated in FTEs differs strongly when looking at the different separate categories. The smaller police districts with less than 25,000 inhabitants dedicated 0 FTEs, despite the fact that 3 supervisors were appointed within this category. This shows that these appointments were only made for appearance's sake. However, in the category of police districts with more than 100,000 inhabitants, 9 supervisors were appointed, which means that 2.52 FTEs were dedicated per police district that has its own supervisors.

On the basis of the data from the Environmental Enforcement Report 2011, a comparison can be made or an evolution can be observed in the appointment of supervisors in 2011 and 2012.

	≤ 24,999		25,000 - 49,999		50,000 - 74,999		75,000 - 99,999		≥ 100,000		Total	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
<i>Response</i>	8	8	52	52	15	19	9	7	6	5	90	91
Police district with appointed supervisor	0	1	9	12	6	7	6	4	3	2	24	26
Police district without appointed supervisor	8	7	43	40	9	12	3	3	3	3	66	65
Number of appointed supervisors	0	3	14	17	14	10	7	6	10	9	45	45
Average number of supervisors per police district	0	3.00	1.55	1.42	2.33	1.43	1.16	1.50	3.33	4.50	1.88	1.73

Table 9 Number of local police supervisors appointed in 2011 and 2012

It can be deduced from the above table that the number of police districts with an appointed supervisor rose slightly from 26.66% in 2011 to 28.57% in 2012 of the total number of responding police districts. Yet, the number of appointed supervisors remained the same, namely 45. This means that the average number of supervisors per police district decreased from 1.88 to 1.73 supervisors per police district that has its own supervisor within the force.

It is striking within the smallest police district category that - in contrast to 2011 - one police district within this category appointed 3 supervisors in 2012. As indicated earlier, this appointment has so far been an appointment for appearance's sake, since no insight is available into the number of FTEs that were dedicated to environmental enforcement duties and since no environmental enforcement inspections were carried

³¹ This amount of time dedicated is calculated by multiplying the average amount of time each supervisor dedicates to supervisory duties by the average number of supervisors per police district (which also actually appointed a supervisor). In this way a picture can be given of the average number of FTEs that are dedicated to environmental enforcement duties within a police district that actually appointed one or more supervisors.

out by these supervisors (see below).

Apart from the comparison of the total number of appointed supervisors in 2011 and 2012, it is also possible to compare between the amount of time dedicated by these supervisors and the amount of time dedicated per category of police districts with a supervisor in 2011 and 2012. The table below gives an overview of the amount of time dedicated to environmental enforcement duties in 2011 and 2012.

	≤ 24,999		25,000 - 49,999		50,000 - 74,999		75,000 - 99,999		≥ 100,000		Total	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
Total amount of time dedicated to supervisory duties by the supervisor (FTEs)	0	0	3.35	5.76	2.04	5.70	2.4	2.95	6	5	13.77	19.41
of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	0	0	3.25	5.3	1.49	4.37	2.2	2.1	6	5	12.94	16.77
of which FTEs dedicated to administrative support by non-supervisors	0	0	0.1	0.46	0.55	1.33	0.2	0.85	0	0	0.85	2.64
Average amount of time dedicated to supervisory duties per supervisor (in FTEs)	0	0	0.24	0.34	0.14	0.57	0.34	0.49	0.6	0.56	0.31	0.43

Table 10 Overview of efforts related to environmental enforcement duties by local police supervisors (according to population) in 2011 en 2012

The above table shows that the total amount of time dedicated to environmental enforcement duties strongly increased in 2012 compared to 2011, namely from 13.77 FTEs to 19.41 FTEs. This increase can be observed in the FTEs which the supervisors themselves dedicated to environmental enforcement duties under the Environmental Enforcement Act, as well as in the FTEs which non-supervisors dedicated to administrative support. Naturally, this increase in the amount of time dedicated to environmental enforcement duties is a positive element.

Since the number of appointed supervisors within the police districts remained the same in 2012 compared to 2011 and since the overall amount of time dedicated to environmental enforcement duties incre-

ased, the average amount of time each supervisor dedicated to supervisory duties grew, namely from 0.31 FTEs in 2011 to 0.43 FTEs in 2012. When looking at the amount of time dedicated it can also be concluded that when a police district had its own supervisors at its disposal more time was dedicated within the force to environmental enforcement duties under the Environmental Enforcement Act in 2012 than in 2011. The total amount of time dedicated in FTEs to environmental enforcement duties within a force with one or more supervisors amounted in 2011 to an average of 0.58 FTEs, whereas this was 0.74 FTEs in 2012. The fact that the police districts reserved more time for the implementation of environmental enforcement duties by the supervisors can of course only be encouraged and shows that the concepts of the Environmental Enforcement Act are still implemented well at the local level.

Environmental enforcement inspections carried out by local police supervisors

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

	≤ 24,999	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	≥ 100,000	Total
<i>Response</i>	8	52	19	7	5	91
Number of appointed supervisors	3	17	10	6	9	45
Number of environmental enforcement inspections carried out	0	894	787	275	1	3,132
Average number of environmental enforcement inspections per supervisor	0.00	52.59	78.70	45.83	0,13	69.60
Average amount of time dedicated to supervisory duties by supervisors (in FTEs)	0.00	0.34	0.57	0.49	0.56	0.43
Average number of environmental enforcement inspections per FTE	0.00	155.21	138	93.22	235	161

Table 11 *Overview of efforts related to environmental enforcement inspections by local police supervisors in 2012*

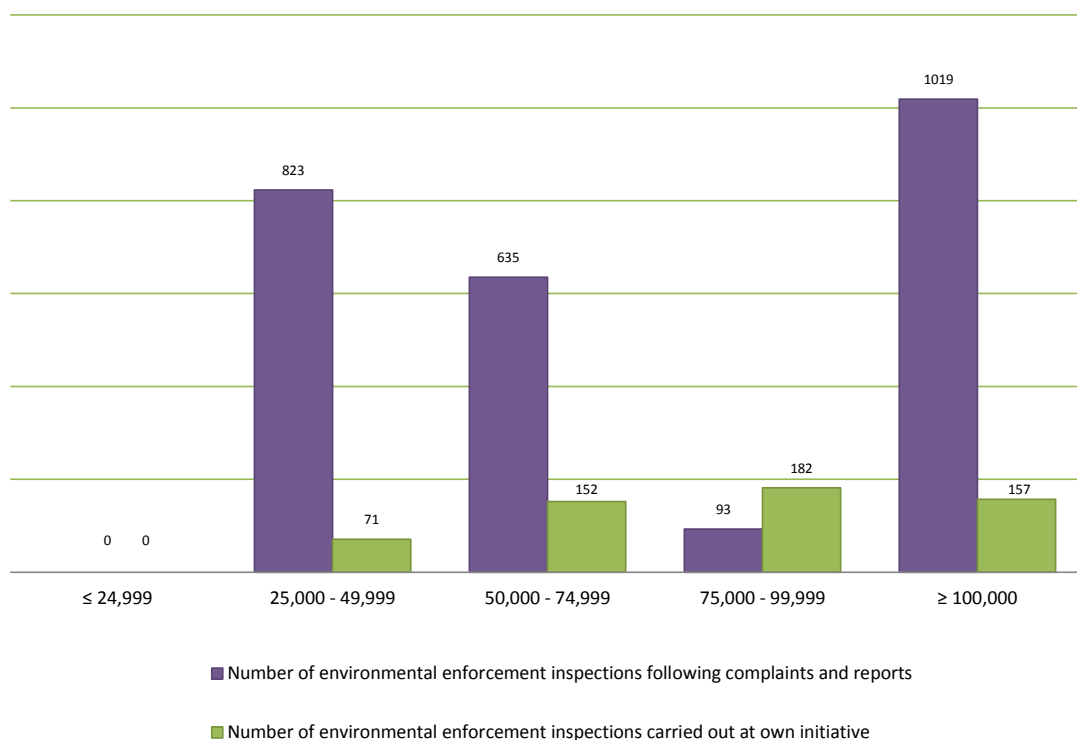
In 2012, the 45 local police supervisors carried out no less than 3,132 environmental enforcement inspections in total. This is a small increase compared to the 3,026 environmental enforcement inspections that were performed in 2011.

The average number of environmental enforcement inspections per supervisor amounted to a total of 69.60 in 2012. When looking at the various separate police district categories, however, a number of differences can be observed. In the smallest category, i.e. police districts with a population smaller than 25,000, no environmental enforcement inspections were carried out at all in 2012 by the 3 supervisors

appointed in this category (cf appointments for appearance's sake), whereas in the largest category, i.e. police districts with more than 100,000 inhabitants, the average number of inspections per supervisor amounted to 130.67.

A large difference can also be found between the different categories in terms of the average number of inspections per FTE, which gives a more accurate picture of the efforts. Whereas the average number of environmental enforcement inspections per FTE amounted to 161 inspections across the categories in 2012, it is again striking that the smallest category and the largest category are both extremes. Naturally, in the police districts with fewer than 25,000 inhabitants this ratio was zero (since no environmental enforcement inspections were carried out), whereas in the police districts with more than 100,000 inhabitants the average number of environmental enforcement inspections was 235 per FTE. The supervisors in this category carried out more than 35% of the total number of inspections. In addition, more than one-fourth of the total number of FTEs dedicated to environmental enforcement duties by the supervisors of all the police districts were dedicated within the police districts of this category.

The graph below gives an overview per category of the number of inspections that were carried out following complaints and reports and the number of inspections that were carried out at own initiative, for instance within the framework of a planned environmental enforcement campaign, in 2012.

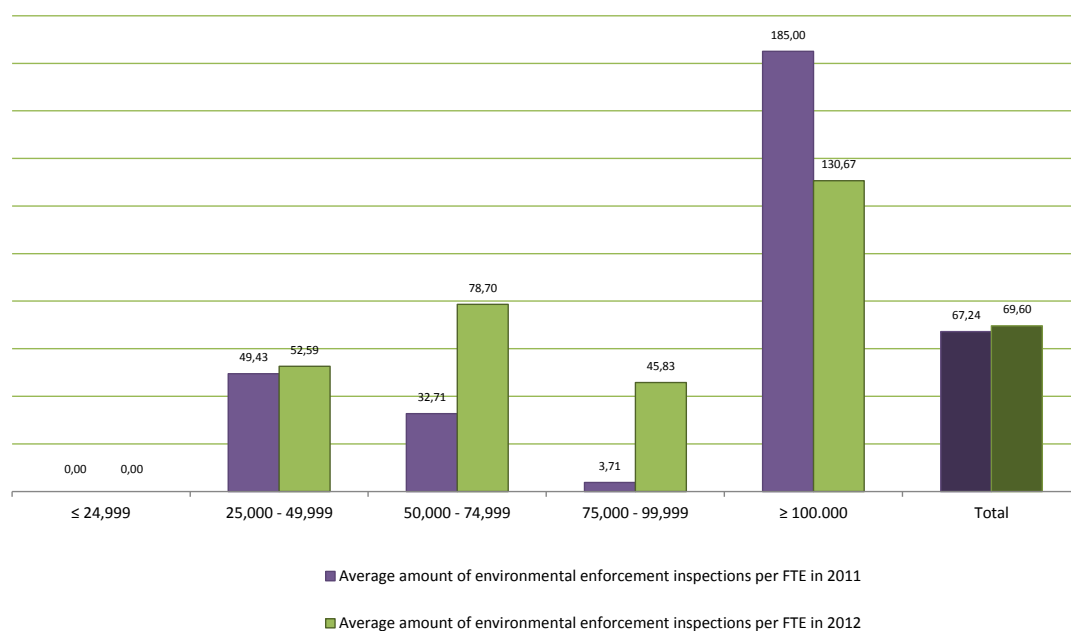


Graph 3 *Number and type of environmental enforcement inspections carried out by local police supervisors (according to police district population) within the framework of the Environmental Enforcement Act in 2012*

In 2012, a total of 562 inspections were carried out at own initiative and 2,570 following complaints and reports. This means that almost 18% of the total number of inspections were carried out by the local police supervisors on their own initiative, for instance in the context of an action programme, and that 82% of the inspections were performed following a complaint or report. Compared to 2011 and 2010, these figures reveal an increase in the number of proactive inspections. In 2011, 15% of the inspections were carried out at own initiative and only 5.77% in 2010. This figure too points to a positive implementation of the Environmental Enforcement Act and to increased attention at the local level to environmental issues. Naturally, this can only be applauded.

However, the picture is more differentiated when each of the different police district categories is considered separately. When leaving the smallest category out of consideration (since it did not carry out any environmental enforcement inspections in 2012), the proactive inspections accounted for 8% to 24% of the total number of performed inspections, except in the police districts with 75,000 to 99,999 inhabitants. In this category more than half of the inspections, namely 66% of the total number, were carried out on a proactive basis in 2012. This is in strong contrast to 2011 when no proactive inspections were carried out within this category.

On the basis of the data from the Environmental Enforcement Report 2011 a comparison can be made between the average number of inspections per supervisor. This comparison is reflected in the graph below.



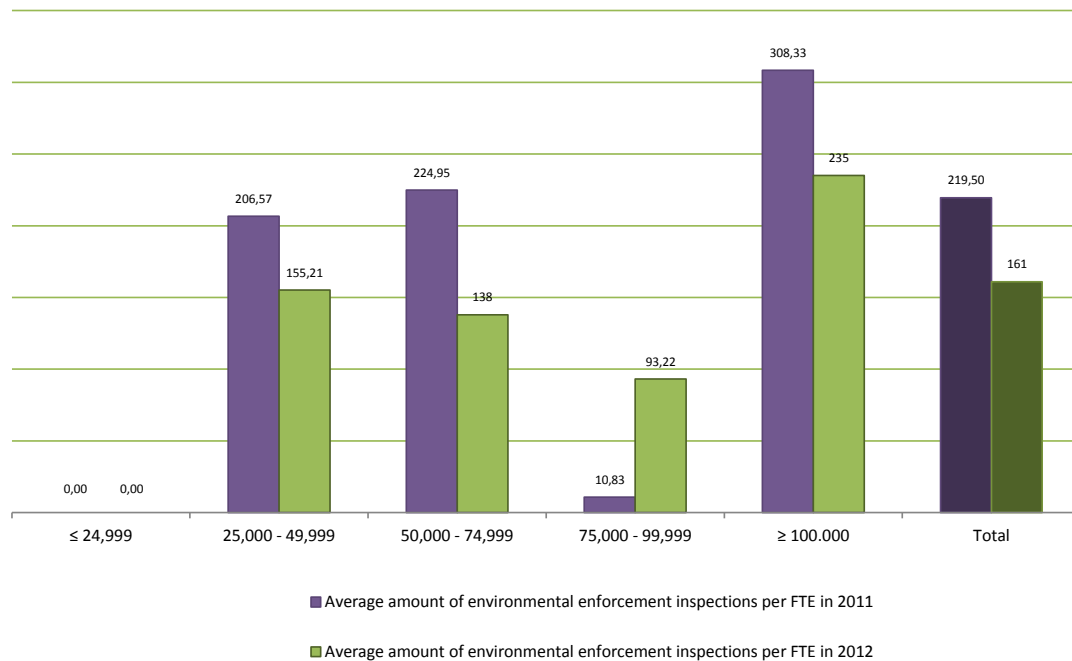
Graph 4 Average number of environmental enforcement inspections per local police supervisor in 2011 and 2012

In comparison with 2011, a small increase can be observed in the average number of inspections per local police supervisor in 2012. In 2011, this ratio amounted to 67.24 inspections per supervisor and in 2012 to 69.60 inspections per supervisor.

This rise is mainly owing to the substantial growth in inspections per supervisor in the category of police districts with 75,000 to 99,999 inhabitants. In 2011, this ratio amounted to 3.71 inspections per supervisor, whereas this grew to 45.83 inspections per supervisor in 2012. This can mainly be explained by the fact that within this category only 26 inspections were performed in 2011 and this number rose to 275 inspections in 2012.

The number of environmental enforcement inspections carried out per supervisor also rose in the categories of police districts with 25,000 to 49,999 inhabitants and 50,000 to 74,999 inhabitants. This ratio only decreased in the largest category.

On the basis of the data from the Environmental Enforcement Report 2011 a comparison can also be made of the average number of inspections per FTE. This comparison is presented in the graph below.



Graph 5 Average number of environmental enforcement inspections per FTE of the local police in 2011 and 2012

All in all, the amount of time dedicated per supervisor, the amount of time dedicated in police districts with a supervisor, the number of dedicated FTEs, the number of inspections and the number of inspections per supervisor increased in 2012. In spite of this, the average number of environmental enforcement inspections per FTE fell from 219.5 inspections per FTE in 2011 to 161 inspections per FTE. This is possibly due to the growing number of proactive inspections. If the nature of the inspections partially changed, the amount of time dedicated to an inspection probably changed as well.

However, in the category of police districts with 75,000 to 99,999 inhabitants the average number of environmental enforcement inspections per FTE substantially increased in 2012. In 2011, this number barely

amounted to 10.83 and in 2012 to 93.22. As indicated earlier, this strong growth can be explained by the huge increase in the number of performed inspections from 26 in 2011 to 275 in 2012.

2.3 Evaluation of the pursued local environmental enforcement policy

Provinces

2.3.1 Provincial governors

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

- ▶ the Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ het decreet van 23 december 2011 betreffende het duurzaam beheer van materiaalcringlopen en afvalstoffen;
- ▶ Articles 4 (operation without a licence) and 22 (operation Categories 2 and 3 without complying with the licensing requirements) of the Flemish Parliament Act of 28 June 1985 on environmental licences.

The provincial governors were asked to give an overview of the requests/petitions they received for the imposition of administrative measures, as well as of the number of administrative measures that were actually imposed following these requests/petitions. It was also asked to give the number of requests which the provincial governor received between 1 January 2012 and 31 December 2012 for the imposition of safety measures and the number of safety measures that were actually imposed.

Administrative measures

Provincial governors can be requested or petitioned to impose administrative measures. Requests for the imposition of administrative measures are to be understood as requests from supervisors to the provincial governor to take administrative measures. On the other hand, administrative measures can also be the subject of a petition for imposition by people who suffer direct loss as a result of an environmental infringement or environmental offence, people who have an interest in this environmental infringement or environmental offence being controlled, and legal persons as referred to in the Act of 12 January 1993 on a right of action with regard to the protection of the environment. This petition must be made by registered letter to the people authorised to impose administrative measures and by means of a petition, stating sufficient reasons, which shows that an environmental infringement or environmental offence is taking place, and in keeping with a strict procedure with short terms.

In 2012, the provincial governors of Antwerp and East Flanders both received one petition to impose administrative measures. In 2011, 3 petitions were submitted to the provincial governors (1 to the governor of Limburg and 2 to the governor of Antwerp).

No administrative measures were imposed by the provincial governors following the aforementioned petitions or at own initiative. In 2011, the provincial governor of Limburg imposed 1 administrative measure in the form of 'administrative enforcement', whereby effective action was taken against the identified environmental infringement or environmental offence.

It can be concluded that the instrument 'requests/petitions for the imposition of administrative measures' addressed to the provincial governors and the actual imposition of administrative measures by provincial governors is hardly to never used. The reason for this could be twofold. On the one hand, because the supervisors - either regional or local - are better placed to impose administrative measures themselves, since the supervisors can act independently and neutrally (cf Article 16.3.3 of the Environmental Enforcement Act) and with the required expertise, qualifications and abilities (cf Article 16.3.2 of the Environmental Enforcement Act) instead of submitting a request to that end to the provincial governor. Another or additional explanation could be that third parties which can file petitions for the imposition of administrative measures with the provincial governor are not informed about this possibility and in the first instance opt to contact the environmental department of the municipalities or the local police (primary monitoring) in order to reach the supervisor. Another reason may be the lack of capacity, support, personnel or experience which the governors were faced with to actually implement the new competences under the Environmental Enforcement Act. Therefore, it may have been opted to have the supervisors themselves impose the administrative measures.

Safety measures

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

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

Between 1 January 2012 and 31 December 2012, none of the provincial governors received a request to impose a safety measure and none of the provincial governors imposed a safety measure by virtue of their office. Also in 2010 and 2011, none of the provincial governors received a request for the imposition of safety measures and they took no safety measures on their own initiative.

2.3.2 Provincial supervisors

Appointed provincial supervisors

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

With a view to this provision, the VHRM therefore considered it appropriate to ask the registrars of the five

Flemish provinces about the appointment of these supervisors and their efforts with regard to environmental enforcement duties.

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

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

On the basis of the Environmental Enforcement Reports 2010 and 2011 it could be concluded that in 2010 and 2011 none of the provinces had a supervisor at their disposal, as referred to in Article 16.3.1, §1, 2° of the Environmental Enforcement Act, who was appointed by the Provincial Executive, or a Vlarem official. The provinces of Limburg, East Flanders and West Flanders reported that in 2012 still no supervisors had been appointed within their province. Only in the province of Antwerp 8 provincial supervisors were appointed in 2012.

The Flemish High Council of Environmental Enforcement did not receive any response from the province of Flemish Brabant.

Efforts related to environmental enforcement duties

These 8 provincial supervisors in the province of Antwerp reported having dedicated a total of 0.2 FTEs to environmental enforcement duties in 2012. In addition, 0.2 FTEs were dedicated to the administrative support of environmental enforcement duties by non-supervisors.

In 2012, one inspection was carried out following a complaint or report.

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

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

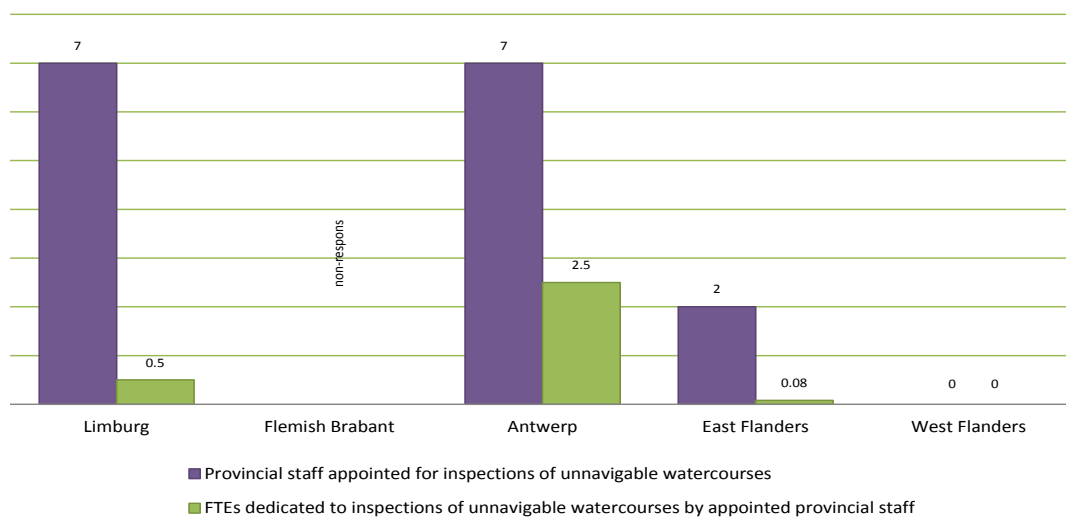
- ▶ Act of 28 December 1967 on unnavigable watercourses;
- ▶ Royal Decree of 5 August 1970 containing the general police regulations on unnavigable watercourses.

Despite the fact that this legislation has not been entered in the Environmental Enforcement Act, this supervision and any related inspections or inspectors are briefly discussed below in this Environmental Enforcement Report 2012.

It should be repeated here that the VHRM did not receive any response from the province of Flemish Brabant.

Appointed provincial staff

The graph below does not just show the number of provincial staff members who are authorised to supervise and inspect the unnavigable watercourses, but also the number of FTEs that were dedicated to these inspections by these appointed provincial staff members in 2012.



Graph 6 Number of appointed provincial staff and amount of time dedicated to unnavigable watercourses in 2012

It can be deduced from the above graph that, in 2012, both the province of Limburg and the province of Antwerp had 7 provincial staff members at their disposal who were appointed to carry out inspections of unnavigable watercourses. In Antwerp these 7 staff members dedicated a total of 2.5 FTEs to these inspections. In Limburg, this was limited to 0.5 FTEs. The province of East Flanders had 2 provincial staff members at its disposal who dedicated a total of 0.08 FTEs to inspections of unnavigable watercourses.

The province of West Flanders reported not having a provincial staff member at its disposal for the implementation of inspections of unnavigable watercourses. Yet, this is in sharp contrast with the data from the Environmental Enforcement Report 2011 for which it was reported that in the province of West Flanders 4 provincial staff members were appointed who were also engaged full-time in inspections of unnavigable watercourses.

Efforts with regard to unnavigable watercourses

The table below gives an overview of the number of inspections that were carried out by the provincial staff members with regard to unnavigable watercourses in 2012, the number of exhortations that were formulated during these inspections and the number of official reports that were drawn up following the

identification of an offence during these inspections.

Efforts of appointed provincial staff members with regard to unnavigable watercourses	Province				
	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Number of inspections of unnavigable watercourses	50		-	35	0
Number of official reports drawn up during these inspections of unnavigable watercourses	1		0	3	0
Number of exhortations formulated during these inspections of unnavigable watercourses	10		30	7	0

Table 12 Number of inspections of unnavigable watercourses in 2012 and number of exhortations formulated and official reports drawn up following these inspections

The province of West Flanders indicated not having carried out any inspections.

In 2012, the provinces of Limburg and East Flanders performed respectively 50 and 35 inspections of unnavigable watercourses. For the province of Limburg this comes down to 7.14 inspections per provincial staff member and 100 inspections per FTE. For the province of East Flanders this amounts to 17.5 inspections per provincial staff member and 437.5 inspections per FTE. The available instruments were not used during each inspection. The province of Limburg used an exhortation during 20% of the inspections and an official report was drawn up once. In the province of East Flanders an official report was drawn up three times and an exhortation was formulated seven times.

The province of Antwerp indicated that the number of inspections of unnavigable watercourses could not be communicated, since these inspections were integrated into the day-to-day activities. However, 30 exhortations were formulated.

The table below gives an overview of the breaches that were identified by the provinces in 2012 following inspections of unnavigable watercourses.

Type overtreding	Province				
	Limburg	Flemish Brabant	Antwerp	East Flanders	West Flanders
Damage to banks	2		10	8	0
Discharge into watercourse	0		5	0	0
Other	8		15	32	0

Table 13 Type of breaches regarding unnavigable watercourses in 2012

The above table shows that a total of 80 breaches with regard to unnavigable watercourses were identified by the provincial staff members. This is in contrast to the limited number of official reports that were drawn up, namely 4, and the number of exhortations that were formulated, namely 47.

The number of identified breaches decreased in comparison with the Environmental Enforcement Report 2011, since 134 breaches were reported in 2011.

The majority of the identified breaches - in the provinces of Limburg, Antwerp and East Flanders - pertained to breaches other than damage to banks and discharge into watercourses, namely almost 69% of the total number of breaches. In addition, 6.25% had to do with discharge into watercourses and 25% concerned damage to banks.

2.3.4 Supporting role of the provinces with respect to the municipalities

The activities of the provinces in the area of environmental enforcement are not only discussed in the framework of the Environmental Enforcement Act. They can also be analysed via the reporting in the framework of the Cooperation Agreement 2008-2013. This Cooperation Agreement 2008-2013 is a voluntary agreement between the Flemish Region and the Flemish provinces in the area of environment, under which financial and content-oriented support from the Government of Flanders is obtained in exchange for the implementation of certain actions. All five Flemish provinces have signed this cooperation agreement. Among other things, this implies that the provinces are responsible for the guidance, coordination and support of municipal environmental policy. The provinces take an active supporting role with respect to individual municipalities, and provide guidance to municipalities depending on their needs. The provinces are under the obligation to draw up an annual report on the implementation of the provincial cooperation agreement. This report touches upon the following topics in conformity with the agreements made: instruments, waste, product use, water, nuisance, energy, mobility, nature, soil and sustainable development.

Therefore, the Environmental Enforcement Report 2012 discusses the reports from the five provinces within the framework of the Cooperation Agreement 2008-2013 and with regard to 2012 in the light of the supporting role of the provinces vis-à-vis the municipalities in the field of environmental enforcement. The data below thus originate from the 2012 reports of the five provinces, namely the reports they made within the framework of the Cooperation Agreement 2008-2013.

In each province these supporting duties are carried out through information centres and through the set-up of regional meetings and the (co-)organisation of training pathways, consultations and training.

In 2012, most provinces focused on the new noise standards.

Province of Limburg

In the province of Limburg an information session about the new noise standards was held in 2012, which was organised by the Department of Environment, Nature and Energy in collaboration with Muziekcentrum Vlaanderen (Flanders Music Centre).

Because the provincial governance school (PLOT) will be discontinued, the municipal environmental and sustainability officers can no longer go there to receive training in matters regarding the environment and environmental law. However, the province of Limburg believes it is important to have one single contact point to coordinate the organisation of training courses. Because the Centrum voor Natuur- en Landschapsbeheer/CNL (Centre for Nature and Landscape Management) already coordinates the training in matters regarding nature and nature legislation and since this training is part of the training in matters regarding the environment and environmental law, it was decided to entrust this task to the CNL. The CNL, meanwhile transformed into the Centre for Sustainable Green (Centrum Duurzaam Groen), has gained more in-depth knowledge of the environment theme in 2012, in view of the organisation of the first training courses in the spring of 2013. In the meantime, the local authorities could turn to PIVO (Flemish Brabant), with which the province of Limburg has had a partnership since years.

Province of Flemish Brabant

During the consultation meetings of environmental officers in the province of Flemish Brabant the officers consult with each other, discuss joint problems and exchange information about how to address problems, including environmental nuisance, for instance with regard to the new noise standards for music activities and the cooperation with (intermunicipal) police districts in the enforcement of the standards or, for instance, with regard to the integrated environmental permit, or with regard to environmental enforcement.

The Provinciaal Instituut voor Vorming en Opleiding/PIVO (Provincial Institute for Training and Education) started with the organisation of the training for environmental supervisors in September 2012. This training still runs until June 2013.

Province of Antwerp

The Provinciaal Instituut voor Hygiëne/PIH (Provincial Hygiene Institute) has been organising advanced environmental law training courses since 2005. These study days mainly pertain to recent modifications to environmental law. Apart from the MKROS training the province of Antwerp organised several training courses in 2012 to support local enforcement actors, amongst others:

- ▶ Advanced environmental law course 'Implications of Salduz on environmental enforcement'
- ▶ Advanced environmental law course 'We receive the Vlarem train together'³²
- ▶ Advanced environmental law course 'Flemish Parliament Act on Materials'
- ▶ Advanced environmental law study day 'Auwch, my ears' (on the new noise standards)

In 2010, the Platform for Local Enforcement was started. This platform is open to local police officers and local supervisors. This series of training courses is intended on the one hand to give information and support, and on the other hand to allow local environmental enforcers to share their questions and experiences. In 2012, the Platform for Local Enforcement discussed the specific theme of 'Swimming Pools, Saunas and Fitness Centres'.

32 Follow up of the yearly changes in the Vlarem legislation. Vlarem II compiles all environmental legislation applicable to companies with permit requirements (including IPPC and other applicable EU-directives). Vlarem I sets out a classification for the different sectoral activities and installations that need an environmental permit (class 1 en 2) or a registration (class 3).

In addition, 'Enforcement, Environmental Licence and Permanent Licence' was one of the items on the agenda of the regional meetings and on 26 November 2012 the VHRM congress on Local Environmental Enforcement (the province of Antwerp was represented, on the one hand as chairman of a workshop and member of the discussion panel, and on the other hand as speaker in a workshop) was actively participated in.

The province of Antwerp also organised the training for local supervisors in 2012, which, in keeping with the Environmental Enforcement Decree, involves a lot of lessons regarding noise nuisance and air pollution.

Province of East Flanders

The province of East Flanders too concentrated on the new noise regulations in 2012. In November 2012, a study day on noise nuisance entitled 'Aan de slag met de nieuwe geluidsnormen voor muziekactiviteiten' (Applying the new noise standards for music activities) was organised and an additional training course was provided for those who are in possession of the Certificate 'Fighting Noise Nuisance', with an eye to obtaining a Certificate of Competence 'Noise Supervision'. Also, the province of East Flanders, through the Provinciaal Centrum voor Milieuonderzoek/PCM (Provincial Centre for Environmental Research), provided the municipalities - upon their request - with technical and scientific support in the field of nuisance, such as advice on noise measurements, the reading and interpretation of acoustics studies...

Province of West Flanders

In the province of West Flanders the Department of Environment, Nature and Energy organised an information session about the new noise standards for music activities together with the Muziekcentrum.

Later in the year the province of West Flanders organised a study day on these new noise standards. Here, questions were answered about the new noise standards, the new parameters, possible subsidisation, the training and the enforcement procedures. The participants were also given the opportunity to take a closer look at different types of sonometers.

Flemish cities and municipalities

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

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

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

- ▶ Act of 26 March 1971 on the protection of surface waters against pollution;
- ▶ Flemish Parliament Act of 23 December 2011 on the sustainable management of closed materials cycles and waste;
- ▶ Article 4 of the Flemish Parliament Act of 28 June 1985 on environmental licences: operation of a nuisance-causing plant without a licence;
- ▶ Article 22 of the Flemish Parliament Act of 28 June 1985 on environmental licences: operation of a Category 2 or 3 plant in contravention of the licensing requirements;
- ▶ Article 62 of the Flemish Parliament Act of 27 October 2006 on soil remediation and soil protection;
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution.

The second municipal actor – the municipal supervisor – was assigned the duty of monitoring compliance with the following legislation:

- ▶ Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy: Title III – company-internal environmental care in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Act of 28 December 1964 on air pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Act of 26 March 1971 on the protection of surface waters against pollution, waste water discharges and the detection of any kind of pollution in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Act of 18 July 1973 on noise pollution abatement in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Government Decree of 7 November 1982, Article 2;
- ▶ Royal Decree of 24 February 1977 on electronically amplified music, Article 5;
- ▶ Flemish Parliament Act of 23 December 2011 on the sustainable management of closed materials cycles and waste and the relevant implementing orders regarding nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Parliament Act of 24 January 1984 containing measures with regard to groundwater management in relation to nuisance-causing plants classified into Categories 1, 2 and 3, as well as unclassified infringements in the open countryside;

- ▶ Flemish Parliament Act of 28 June 1985 on environmental licences in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Flemish Parliament Act of 22 December 2006 on the protection of water against agricultural nitrate pollution;
- ▶ Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside;
- ▶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste in relation to nuisance-causing plants classified into Categories 2 and 3, as well as unclassified infringements in the open countryside.

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

2.3.5 Mayors

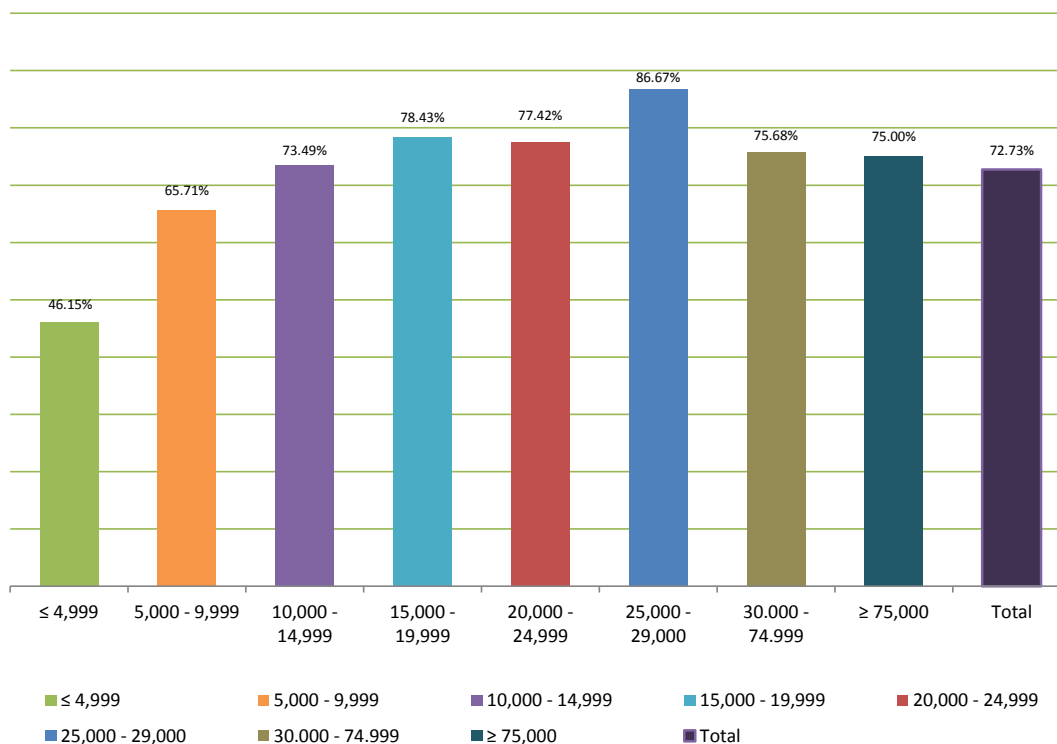
The survey of the mayors of the cities and municipalities in the Flemish Region ran parallel with the survey of the municipal supervisors for the present Environmental Enforcement Report. The mayors were asked to report on their activities within the framework of the imposition of administrative measures and safety measures in 2012.

Response

The Flemish High Council of Environmental Enforcement received a response from 224 mayors in the Flemish Region (on a total of 308). This is a response rate of 72.73%, which is an increase compared to the

response rate for the Environmental Enforcement Report 2011, namely 63.63%, and the Environmental Enforcement Report 2010, namely 60.06%.

The graph below shows the spread over the different categories of municipalities.



Graph 7 Response rate in percentages of the mayors of the Flemish cities and municipalities per category of municipalities

In the smallest category (municipalities with fewer than 4,900 inhabitants) only 6 of the 13 mayors responded. This is a response rate of less than 50% in this category. In the other categories a response rate of at least 65% was each time achieved. In the category of municipalities with 25,000 to 29,000 inhabitants, 13 of the 15 mayors responded, which is the highest response rate.

A positive element is the fact that the response rate grows each year. As a result, the data in these reports become increasingly representative and a more accurate picture can thus be given of all the facets of the environmental enforcement landscape.

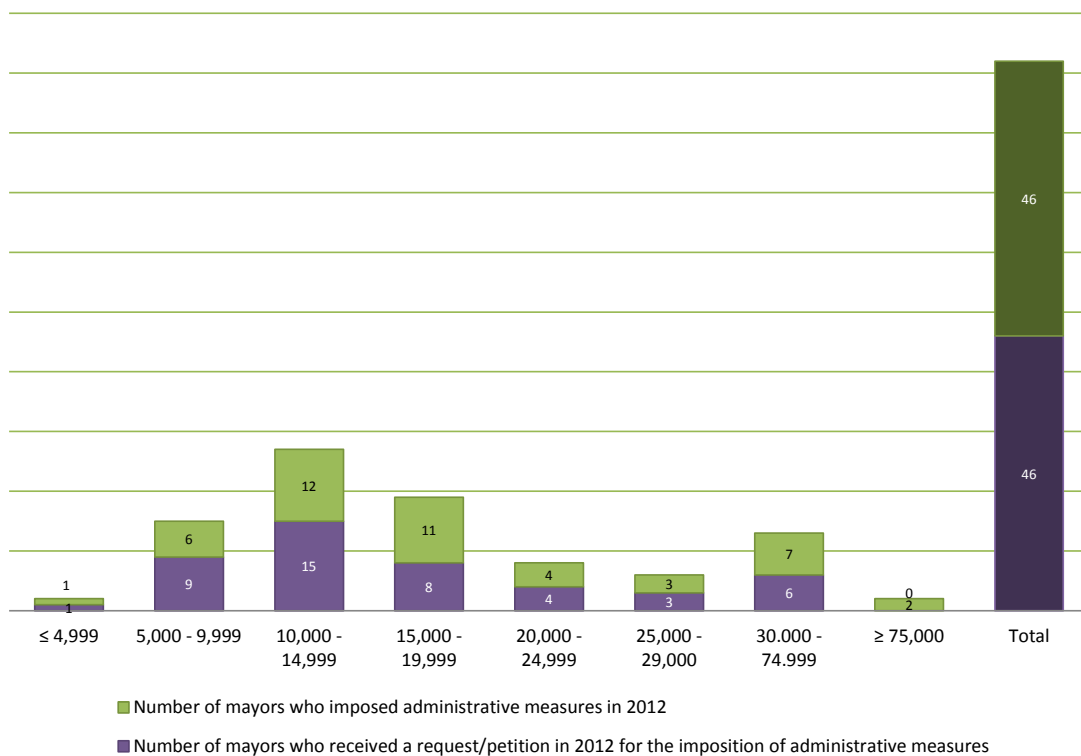
Administrative measures

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

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

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

The graph below gives an overview of the number of responding mayors who received a request/petition to impose administrative measures and the number of responding mayors who actually imposed an administrative measure in 2012.



Graph 8 *Number of responding mayors who received a request/petition to impose administrative measures and the number of responding mayors who imposed administrative measures in 2012*

In total, 46 of the 224 responding mayors indicated that they received a request or petition to impose administrative measures in 2012. This comes down to 20.53%. The above graph also shows that 46 of the 224 responding mayors reported having imposed administrative measures. However, when looking at the separate category it becomes clear that this is definitely not a one-to-one relation and that some mayors who received requests/petitions for this purpose in 2012 did not impose any administrative measures. It

is also apparent from the figures that a number of mayors imposed administrative measures on their own initiative.

The previous environmental enforcement report showed that in 2011 as well almost 20% of the responding mayors had received a request or petition to impose administrative measures. Still, in 2011, almost 17% of the responding mayors actually imposed administrative measures, whereas in 2012 this share increased to 20.53%. Since the response rate is higher in 2012 than in 2011, the real figures are higher as well. In 2011, 33 mayors used their authority to impose administrative measures. In 2012, their number amounted to 46. This testifies to a further integration of the competences entrusted to them by the Environmental Enforcement Act.

Since there is a difference between requests and petitions to impose administrative measures, the table below gives an overview of the requests which the mayors received from the different enforcement actors and the number of petitions for the imposition of administrative measures that were submitted to the mayors.

Administrative measures							
Mayor of a municipality/city with a population of:	Requests/petitions received by the mayor regarding the imposition of administrative measures, by:						
	Regional supervisors	Municipal supervisors	Intermunicipal association	Police district	Provincial supervisors	Requests made by third parties:	Total
≤ 4,999	0	0	0	1	0	0	1
5,000 - 9,999	2	4	1	3	1	12	23
10,000 - 14,999	5	4	5	7	2	43	66
15,000 - 19,999	5	5	1	2	0	5	18
20,000 - 24,999	0	4	0	0	0	12	16
25,000 - 29,000	2	7	0	16	0	5	30
30,000 - 74,999	0	11	0	1	0	3	15
≥ 75,000	0	0	0	0	0	0	0
Total	14	35	7	30	3	80	169

Table 14 Requests/petitions for the imposition of administrative measures received by the mayors of the Flemish cities and municipalities in 2012

The table above shows that the 46 mayors who received a request or petition for the imposition of an administrative measure in 2012 received no less than 169 requests and petitions. This comes down to 3.6 requests/petitions per mayor.

47% of these 169 requests and petitions were petitions from third parties. This means that more than half of the requests were made by supervisors, and in particular local supervisors (30 requests made by local police supervisors and 35 requests for the imposition of administrative measures made by municipal

supervisors).

Compared to the data from the Environmental Enforcement Report 2011 a small increase can be observed in the total number of requests/petitions for the imposition of administrative measures that were addressed to the mayors, namely from 144 in 2011 to 169 in 2012. This increase is mainly due to a rise in the number of petitions from third parties, namely from 48 in 2011 to 80 in 2012. This shows that citizens as well are making more frequent use of the options provided by the Environmental Enforcement Act.

The mayors of the Flemish cities and municipalities were not only asked about the number of petitions and requests for the imposition of administrative measures they received in 2012, but also about how many and which types of administrative measures they actually imposed in that year.

The administrative measures that may be imposed are:

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

In order to examine the effectiveness of this instrument, it was also asked whether it was possible to have the imposed administrative measure implemented within the imposed term. If the rate of compliance of the instrument 'administrative measures' would be low, this could mean that this environmental enforcement instrument is neither very effective or efficient, nor has a great impact.

The table and graph below give an overview of the types of administrative measures that were imposed by the mayors in 2012 and the number of these imposed administrative measures that were not implemented within the imposed term.

Administrative measures						
Mayor of a municipality/city with a population of:	Administrative measures imposed by mayors					
	Prohibition order	Regularisation order	Administrative enforcement	Combination (prohibition, regularisation, administrative enforcement)	Total	It was not possible to have the measure carried out within the imposed term
≤ 4,999	1	0	0	0	1	0
5,000 - 9,999	5	11	1	0	17	1
10,000 - 14,999	3	18	1	1	23	6
15,000 - 19,999	2	18	4	2	26	1
20,000 - 24,999	4	7	1	6	18	0
25,000 - 29,000	5	21	0	2	28	4
30,000 - 74,999	4	13	0	1	18	4
≥ 75,000	1	3	0	1	5	0
Total	25	91	7	13	136	16

Table 15 Number and type of administrative measures imposed by the mayors of the Flemish cities and municipalities in 2012

First of all, it can be concluded that at least 33 requests or petitions to impose administrative measures did not result in the actual imposition of an administrative measure. Indeed, 169 requests/petitions were submitted and 136 administrative measures were imposed by the mayors in 2012. It was already indicated earlier that the mayors can also impose administrative measures by virtue of their office, which was actually the case in 2012.

The majority of the imposed administrative measures, namely 67%, were regularisation orders. In addition, 25 prohibition orders were imposed in 2012, which comes down to 18.38% of the total number of imposed administrative measures. Almost 10% of the administrative measures encompassed a combination of the different types of measures. 'Administrative enforcement' was less frequently used as administrative measure in 2012 and was applied only 7 times, which is 5.14% of the total number of imposed administrative measures.

For 16 of the total of 136 imposed administrative measures it was impossible to carry them out or have them carried out in time. This means that at least 1 in 10 of the administrative measures imposed by the mayors were not carried out in time.

In 2012, a few less administrative measures were imposed by the mayors than in 2011. In 2011, 142 administrative measures were imposed. The regularisation order was the most popular instrument at that time as well. It was used 87 times. In 2011, about 18% of the administrative measures were prohibition orders. This trend continued in 2012. The application of the administrative enforcement increased in 2012, whereas the combination of the administrative measures decreased. What strikes is that in 2011 only 5% of the administrative measures were not implemented in time, whereas in 2012 this was the case in 10% of the imposed administrative measures.

Safety measures

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

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

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



Graph 9 Number of responding mayors who received a request to impose safety measures and the number of responding mayors who imposed safety measures in 2012

The graph above shows that 17 of the 224 responding mayors received a request for the imposition of safety measures. This is 7.59% of the total number of responding mayors.

The number of mayors who actually imposed a safety measure following a request or by virtue of their office, is higher and amounts to more than 10% of the total number of responding mayors.

In comparison with the data from the Environmental Enforcement Report 2011 it turns out that the percentage of mayors who receive a request for the imposition of safety measures remains practically the same, but that the percentage of mayors who actually impose a safety measure increases by 3%. An increase can also be observed in real figures. In 2011, 14 mayors imposed a safety measure, whereas this number increased to 24 mayors in 2012. This shows that more mayors used this instrument.

The mayors can impose safety measures by virtue of their office, but also following the request of a supervisor. The table below gives an overview of the number of requests that were submitted to the mayors in 2012 in the different categories of cities and municipalities and of which supervisors submitted these requests.

Safety measures							
Mayor of a municipality/city with a population of:	Requests received by the mayor regarding the imposition of safety measures, by:						
	Regional supervisors	Municipal supervisors	Supervisors of an inter-municipal association	Police district supervisors	Provincial supervisors	Third parties	Total
≤ 4,999	0	0	0	0	0	0	0
5,000 - 9,999	0	4	0	0	0	0	4
10,000 - 14,999	0	0	0	5	2	0	7
15,000 - 19,999	1	5	0	2	0	0	8
20,000 - 24,999	0	6	0	0	0	0	6
25,000 - 29,000	1	2	0	0	0	0	3
30,000 - 74,999	0	4	0	0	0	0	4
≥ 75,000	0	1	0	0	0	0	1
Total	2	22	0	7	2	0	33

Table 16 Number of requests for the imposition of safety measures received by the mayors of the Flemish cities and municipalities in 2012

The 17 mayors who received a request to impose safety measures in 2012 together received a total of 33 such requests. The majority, namely 66.66%, were made by municipal supervisors. The 7 requests to impose safety measures that were made by local police supervisors accounted for 21.21% of the total number of requests. The requests made by regional supervisors and provincial supervisors each time amounted to 6.06% of the total number of requests in 2012.

These 33 requests for the imposition of safety measures represent a small decrease compared to the 39

requests that were made to the mayors in 2011.

The mayors of the Flemish cities and municipalities were not only asked to indicate how many requests for the imposition of safety measures they received in 2012, but also how many and which types of safety measures they actually imposed in that year.

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

Safety measures								
Mayor of a municipality/city with a population of:	Safety measures imposed by the mayor						Total	It was not possible to have the measure carried out within the imposed term
	The suspension or execution of works, actions or activities, immediately or within a given term	The prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	The complete or partial closure of a plant	The seizure, storage or removal of relevant objects, including waste and animals	No entry to or leaving of certain areas, grounds, buildings, or roads			
≤ 4,999	0	0	0	0	0	0	0	
5,000 - 9,999	4	0	0	1	0	5	0	
10,000 - 14,999	5	0	1	4	0	10	5	
15,000 - 19,999	2	1	0	5	0	8	4	
20,000 - 24,999	3	1	1	0	0	5	2	
25,000 - 29,000	3	3	0	0	0	6	3	
30.000 - 74.999	5	1	2	1	0	9	1	
≥ 75,000	0	1	0	0	0	1	0	
Total	22	7	4	11	0	44	15	

Table 17 Number and type of safety measures imposed by the mayors of the Flemish cities and municipalities in 2012

In 2012, 24 mayors imposed a total of 44 safety measures. This comes down to 1.83 safety measures per mayor in 2012. In 2011, this ratio was 1.85. However, only 26 safety measures were imposed by 14 mayors. This shows that not only the number of mayors who used this instrument rose, but that the use of the instrument itself increased as well.

Half of the safety measures imposed in 2012 pertained to the suspension or execution of works, actions or activities, immediately or within a given term. In one-fourth of the cases the safety measure referred to the seizure, storage or removal of relevant objects, including waste and animals. 'No entry to or leaving of certain areas, grounds, buildings, or roads' was never imposed as a safety measure in 2012.

Furthermore, it can be observed that 34.09% of all the imposed safety measures were not implemented within the imposed terms in 2012. This is an improvement compared to the 42.30% of the safety measures imposed in 2011.

2.3.6 Municipal supervisors

To obtain an insight into the organisation and efforts regarding local environmental enforcement, the 308 Flemish cities and municipalities were asked via a questionnaire, by analogy with the Environmental Enforcement Reports 2009, 2010 and 2011, to provide information about the appointment of supervisors, the organisation of supervisory activities in the municipality, the number of environmental enforcement inspections carried out, as well as the result of these inspections. The results of the environmental enforcement inspections are discussed in Chapter 3 where an evaluation per enforcement instrument will provide an insight into this. The present chapter tries to give a picture of:

- ▶ the response of the municipalities to the VHRM questionnaire;
- ▶ the number of Category 1, 2 and 3 nuisance-causing plants;
- ▶ the appointment of supervisors by the Flemish cities and municipalities;
- ▶ the number of appointed supervisors per municipality;
- ▶ the amount of time dedicated to supervisory duties by supervisors;
- ▶ the organisation of supervisory activities in cities and municipalities;
- ▶ the number of inspections carried out per category of municipality, per supervisor, and per FTE.

Response

Municipality/city with a population of:	Number of municipalities and cities	Number of responding municipalities and cities
≤ 4,999	13	6
5,000 - 9,999	70	46
10,000 - 14,999	83	61
15,000 - 19,999	51	40
20,000 - 24,999	31	24
25,000 - 29,000	15	13
30,000 - 74,999	37	28
≥ 75,000	8	6
Total	308	224

Table 18 Number of responding municipalities per category compared to the total number of municipalities per category in 2012

The table above shows that - by analogy with the response of the mayors - 224 municipalities completed the VHRM questionnaire. This is a response rate of 72.72% of the total number of municipalities in the Flemish Region, which is a strong increase compared to the response rate in the previous environmental enforcement reports when this was never higher than 64% (Environmental Enforcement Report 2009: 62.66%, 2010: 60.06% and 2011: 63.64%).

Naturally, this increase is a positive element. As a result of this, the data in these reports become increasingly representative and a more accurate picture can be given of all facets of the environmental enforcement landscape.

Nuisance-causing plants per municipality

Cities and municipalities were asked how many licenced plants falling into Categories 1, 2 and 3 in accordance with Appendix I to Title I of Vlarem are located on their territory, and at what number they estimated the total of unlicenced nuisance-causing plants in their city/municipality in 2012. The purpose of this question was to gain insight into the number of nuisance-causing plants per municipality, as this is essential to draw up a good inspection plan and to estimate and evaluate the efforts made in the field of environmental supervision. In addition, the number of nuisance-causing plants falling into Category 2 is used as criterion to determine how many supervisors a municipality should have at its disposal. In order to avoid any confusion, the term 'unlicenced nuisance-causing plant' was defined as follows: These are plants that could be classified, on the basis of Vlarem, as Category 1, 2 or 3 plants, but have not yet been licenced as such.

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

Population	Number of respondents per population category	Category 1 plants in 2012			Category 2 plants in 2012			Category 3 plants in 2012			Unlicensed plants in 2012		
		Total Number according to survey	Average Number per municipality	Number of municipalities that have no information on number of category 1 plants	Total Number according to survey	Average Number per municipality	Number of municipalities that have no information on number of Category 2 plants	Total Number according to survey	Average Number per municipality	Number of municipalities that have no information on number of Category 3 plants	Total Number according to survey	Average Number per municipality	Number of municipalities which do not know the number of Unlicensed plants or indicated that there were no unlicensed plants
≤ 4,999	6	141	23.50	0	267	44.50	0	781	130.17	0	10	10.00	5
5,000 – 9,999	46	1,538	34.95	2	4,860	113.02	3	12,191	283.51	3	609	32.05	27
10,000 – 14,999	61	2,783	52.51	8	8,221	152.24	7	20,379	384.51	8	575	26.14	39
15,000 – 19,999	40	1,779	44.48	0	5,686	142.15	0	17,646	464.37	2	519	28.83	22
20,000 – 24,999	24	1,881	78.38	0	5,768	240.33	0	18,771	782.13	0	274	30.44	15
25,000 – 29,000	13	1,089	90.75	1	3,220	268.33	1	7,191	653.73	2	245	61.25	9
30,000 – 74,999	28	4,843	179.37	1	11,237	416.19	1	24,670	948.85	2	1,048	116.44	19
≥ 75,000	6	2,729	454.83	0	5,740	956.67	0	2,950	491.67	0	32	32.00	5
Total	224	16,783	79.17	12	44,999	212.26	12	104,579	505.21	17	3,312	39.90	141

Table 19 Number of nuisance-causing plants per category of municipalities in 2012

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

The above table shows that, in 2012, 212 of the total of 224 responding municipalities had a total of 16,783 Category 1 plants on their territory. On the other hand, 12 municipalities indicated not having any insight into the number of Category 1 plants on their territory. This means that a municipality in the Flemish Region has on average 79.17 Category 1 plants. However, when looking at each separate category, this average is much more differentiated. The municipalities in the smallest category have an average of only 23.50 Category 1 plants, whereas this rises to 245.83 Category 1 plants in the largest category of cities. All in all, the number of Category 1 plants increases as the population grows.

With regard to the Category 2 plants, it can be concluded that 212 of the 224 responding municipalities together had 44,999 Category 2 plants on their territory, which is an average of 212.26 Category 2 plants per municipality. Here as well, the picture differs strongly when looking at the separate categories. The smallest municipalities had an average of 44.50 Category 2 plants and the largest municipalities an average of no less than 956.67. Just like with Category 1 plants, all in all the number of Category 2 plants increases as the population grows.

A similar trend can be observed with regard to Category 3 plants. The number of municipalities that have no insight into the number of Category 3 plants on their territory is a bit higher than for Category 1 and Category 2 plants and amounts to 7.58% of the number of responding municipalities. In 2012, the other 207 municipalities together had 104,579 Category 3 plants on their territory, which is 505.21 per municipality.

A striking element is that no less than 83 of the responding municipalities indicated knowing about 3,312 unlicensed plants on their territory. As indicated earlier, these are plants that could be classified, on the basis of Vlare, as Category 1, 2 or 3 plants, but have not yet been licensed as such. This comes down to an average of no less than 39.90 nuisance-causing plants requiring a licence per municipality which are in fact not legitimately operated, since no licence was granted (yet) or no notification was done yet (Category 3 plants). Therefore, it seems very logic to recommend that these municipalities focus their enforcement on these unlicensed nuisance-causing plants. After all, these municipalities are aware of violations against environmental law and should therefore be expected to take relevant action.

The other 141 responding municipalities reported not knowing the number of unlicensed plants or not having any such plants on their territory.

Organisation of local supervision

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

The table below shows per category of municipalities how they implemented the duties of local supervisor in 2012: with their own personnel, or via an intermunicipal association or a police district. The figures below refer to the number of supervisors, not the number of municipalities.

Organisation of local supervision	Supervisor is part of the municipality's own personnel	Supervisor is part of an intermunicipal association	Supervisor is part of a police district
≤ 4,999	1	0	2
5,000 - 9,999	32	18	25
10,000 - 14,999	50	32	37
15,000 - 19,999	36	8	20
20,000 - 24,999	26	15	9
25,000 - 29,000	17	7	6
30.000 - 74.999	45	3	13
≥ 75,000	31	0	1
Total	238	83	113

Table 20 Organisation of local supervision in 2012

The responding municipalities indicate having a total of 434 supervisors at their disposal who may or may not belong to their own staff, to an intermunicipal association or to a police district. This is an increase compared to the 344 local supervisors that were reported for the Environmental Enforcement Report 2011. This can partially be explained by the increased response rate, but also by the decrease in the number of municipalities that did not yet have a supervisor at their disposal in 2012 (see below).

The majority of the local supervisors, namely 54.83%, are part of the municipality's own personnel, 26.03% of the police district and 19.12% of an intermunicipal association.

However, with regard to the data in the above table it should be remarked that double counts have been made in the total number of supervisors who were part of an intermunicipal association and the number of supervisors belonging to a police district. The responses are given by the individual municipalities. Since both police districts and intermunicipal associations (can) consist of several municipalities, several municipalities may have reported the same supervisors they had at their disposal in 2012. As a result, the percentage share of the number of supervisors who were part of the municipality's own personnel will even be higher in reality, whereas the total number of appointed supervisors will be lower.

Number of appointed local supervisors

The collected data can be used to analyse to what extent the municipalities in the Flemish Region satisfied the provisions of the Environmental Enforcement Act with regard to the appointment of supervisors in 2012. Article 16 §1 of the Decree of 12 December 2008 implementing Title XVI of the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy, in short the Environmental Enforcement Decree, indeed stipulates that municipalities are required to have at least 1 supervisor at

their disposal within one year after the coming into effect of the aforementioned Decree, which was on 1 May 2010. This can be either a municipal supervisor or Vlare officer, or a supervisor or Vlare officer of an intermunicipal association, or a supervisor or Vlare officer of a police district. As of 1 May 2011, municipalities with more than three hundred Category 2 plants in accordance with Title I of Vlare or with more than thirty thousand inhabitants if the number of plants is insufficiently known are at least required to have two supervisors at their disposal. This can be either municipal supervisors, or police district supervisors, or supervisors of intermunicipal associations.

The tables below show - using both the number of Category 2 nuisance-causing plants and the number of inhabitants - to what extent the municipalities had sufficient supervisors at their disposal in 2012.

Appointment of supervisors on the basis of the number of nuisance-causing plants	Number of municipalities		
	Without supervisors	With 1 supervisor	With 2 or more supervisors
> 300 Category 2 nuisance-causing plants	1	9	29
< 300 Category 2 nuisance-causing plants	5	90	78
No insight into the number of nuisance-causing plants	2	6	4
Total	8	105	111

Table 21 Appointment of local supervisors on the basis of the number of nuisance-causing plants in 2012

If the number of nuisance-causing plants is taken as the criterion for determining the number of supervisors which a municipality should have at its disposal - whether or not appointed within the municipality itself, through an intermunicipal association or within a police district - it can be concluded on the basis of the above table that at least 17 and at most 23 of the responding municipalities did not have sufficient supervisors at their disposal. This is minimum 7.58% and maximum 10.26% of the total number of responding municipalities. A remarkable improvement can be observed compared to the data from the Environmental Enforcement Report 2011 when, on the basis of the number of nuisance-causing plants, at least 30% of the responding municipalities did not have sufficient supervisors at their disposal.

The total number of responding municipalities that did not have a supervisor at their disposal also declined strongly by 37 municipalities in 2012.

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

Appointment of super- visors on the basis of the number of nuisance- causing plants	Number of municipalities		
	Without supervisors	With 1 supervisor	With ≥ 2 supervisors
≤ 4,999	3	3	0
5,000 - 9,999	2	27	17
10,000 - 14,999	1	30	30
15,000 - 19,999	0	27	13
20,000 - 24,999	2	7	15
25,000 - 29,000	0	4	9
30.000 - 74.999	0	7	21
≥ 75,000	0	0	6
Total	8	105	111

Table 22 Appointment of local supervisors on the basis of the population in 2012

Just like in the previous table, it is apparent from the above table that 8 municipalities did not yet have a supervisor at their disposal in 2012. This is 3.75 % of the total number of responding municipalities. In comparison with the Environmental Enforcement Report 2011, which showed that 49 (25%) of the then 196 responding municipalities did not yet have a supervisor at their disposal, this is a substantial improvement.

If the number of inhabitants is used as the criterion for determining the legally defined number of supervisors, all municipalities with more than 30,000 inhabitants should have at least 2 supervisors at their disposal. The above table indicates that within the two largest categories (the municipalities with more than 30,000 inhabitants), only 7 municipalities had one supervisor at their disposal and did thus not yet satisfy the provisions of the Environmental Enforcement Act in 2012. Within the largest category (municipalities with more than 75,000 inhabitants) each responding municipality has 2 or more supervisors at its disposal. This is also an improvement compared to 2011, when almost 42% of the municipalities with more than 30,000 inhabitants did not meet the requirement to have at least 2 supervisors at their disposal. In 2012, this share decreased to around 20%.

Appointment of municipal supervisors and amount of time dedicated

The municipalities and cities in the Flemish Region were asked to report whether the municipality had a supervisor at its disposal between 1 January 2012 and 31 December 2012 and how many supervisors, if any, were appointed within the municipality itself, within the police district or within an intermunicipal association. This has already been discussed in the previous section. It was also asked how many supervisors were appointed within the municipality itself, how many FTEs these supervisors dedicated to environmental enforcement duties in 2012 and how many FTEs were dedicated within the municipality itself to the administrative support of environmental enforcement duties by non-supervisors.

The following table gives an overview of the appointment and the amount of time dedicated by municipal supervisors per category of municipalities in 2012.

Population	Response	Municipality with appointed supervisor	Municipality without appointed supervisor	Total number of appointed municipal supervisors	Average number of supervisors per municipality	Amount of time dedicated to supervisory duties (FTEs)			Average amount of time dedicated to supervisory duties by supervisors (FTEs)
						Total FTE	of which FTEs dedicated to environmental enforcement duties by the supervisor within the framework of the Environmental Enforcement Act	of which FTEs dedicated to the administrative support of environmental enforcement duties by non-supervisors	
≤ 4,999	6	3	3	1	0.33	0.01	0.01	0.00	0.01
5,000 – 9,999	46	44	2	32	0.73	4.99	6.59	1.60	0.21
10,000 - 14,999	61	60	1	50	0.83	10.97	13.26	2.29	0.27
15,000 - 19,999	40	40	0	36	0.90	7.69	12.41	4.72	0.34
20,000 – 24,999	24	22	2	26	1.18	3.29	4.71	1.42	0.18
25,000 – 29,000	13	13	0	17	1.31	3.52	4.65	1.13	0.27
30,000 – 74,999	28	28	0	45	1.61	8.13	11.12	2.99	0.25
≥ 75,000	6	6	0	31	5.17	13.70	15.20	1.50	0.49
Total	224	216	8	238	1.10	52.30	67.947	15.65	0.29

Table 23 Appointment and time dedicated of municipal supervisors per category of municipalities in 2012

As indicated earlier, a total of 238 municipal supervisors were active in 2012. This is an average of 1.10 municipal supervisors per municipality with an appointed supervisor. However, this average differs strongly when looking at the different categories of municipalities. In the smallest category the average number of supervisors per municipality is barely 0.33, whereas in the largest cities this average rises to 5.17. It can be deduced from this that the larger the population, the more supervisors were appointed within the municipalities.

Within the municipalities that had 238 municipal supervisors at their disposal in 2012, a total of 67.95 FTEs were dedicated to environmental enforcement duties, of which approximately 77% by supervisors to environmental enforcement duties under the Environmental Enforcement Act and about 23% to the administrative support of environmental enforcement duties by non-supervisors.

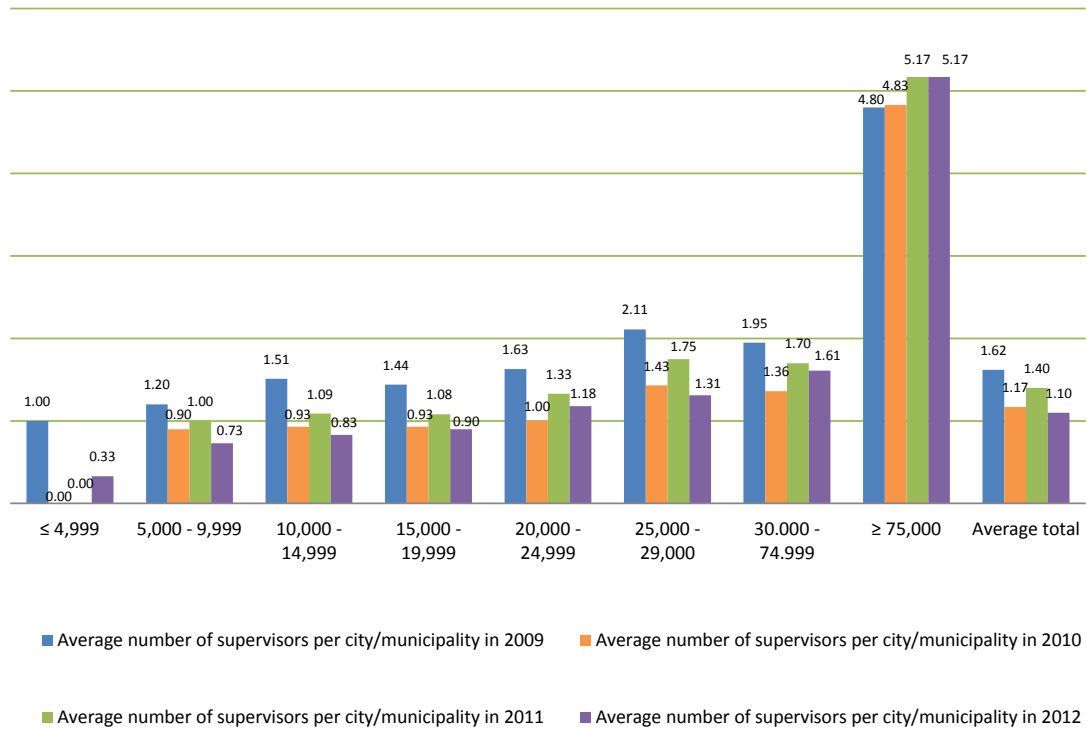
The average amount of time³³ each municipal supervisor dedicated to environmental enforcement duties (this includes the FTEs dedicated to administrative support) amounted to 0.29 FTEs in 2012. This means that the average municipal supervisor is used for less than one-third for the implementation of environmental enforcement duties under the Environmental Enforcement Act. Since there are on average 1.10 supervisors per municipality, the average amount of time dedicated to enforcement duties was³⁴ 0.31 FTEs per municipality that had a supervisor at its disposal.

When looking at the separate categories of municipalities, however, a large diversity can be observed, both with regard to the average amount of time dedicated to environmental enforcement duties and in terms of the amount of time dedicated. In 2012, the average amount of time each municipal supervisor dedicated to environmental enforcement duties was 0.29 FTEs. In the largest municipalities (category of municipalities with more than 75,000 inhabitants) the supervisor dedicated an average of almost 50% of his or her time to environmental enforcement duties and the average amount of time these municipalities dedicated to environmental enforcement duties was 2.53 FTEs in total. However, the average amount of time dedicated per municipal supervisor as well as the amount of time dedicated per municipality strongly decrease as the number of inhabitants declines.

On the basis of the aforementioned data and those from the Environmental Enforcement Reports 2009, 2010 and 2011, it is possible to make a comparison of the average number of municipal supervisors per municipality that had a supervisor at its disposal. This is reflected in the graph below.

33 The average amount of time dedicated per supervisor is the total number of reported FTEs dedicated to environmental enforcement duties per category of municipalities, divided by the total number of indicated appointed supervisors per category of municipalities.

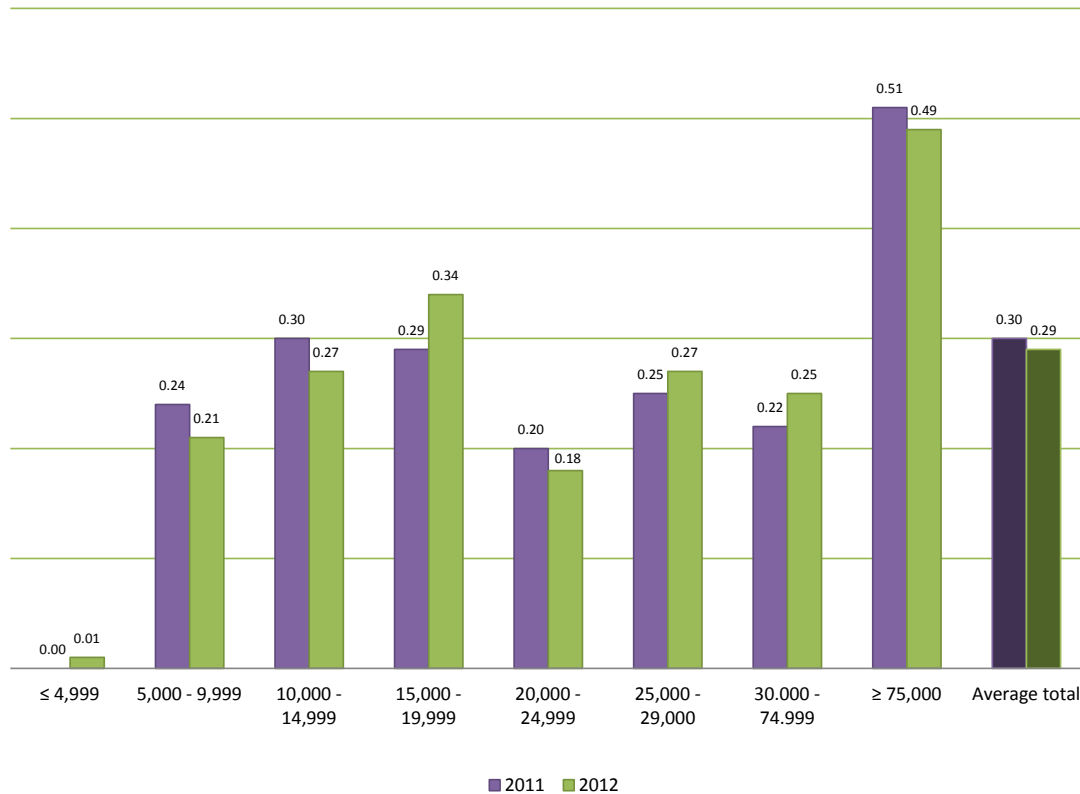
34 This amount of time dedicated is calculated by multiplying the average amount of time each supervisor dedicated to supervisory duties by the average number of municipal supervisors per municipality which actually had a supervisor at its disposal. In this way a picture can be given of the average number of FTEs that were dedicated to environmental enforcement duties within a municipality that actually appointed one or more supervisors.



Graph 10 Comparison of the average number of supervisors per city/municipality in 2009, 2010, 2011 and 2012

The average number of municipal supervisors per municipality that had a supervisor at its disposal was the lowest in 2012 since the Environmental Enforcement Act had become effective. This decrease can mainly be observed in the categories of smaller municipalities. It could already be concluded earlier that the total number of local supervisors increased, as well as the number of municipalities that had at least one supervisor at their disposal. The decrease in the average number of municipal supervisors can possibly be explained by the fact that a growing number of municipalities decide to call in the services of a supervisor from an intermunicipal association or a police district supervisor.

Apart from the average number of municipal supervisors per municipality, the average amount of time dedicated per municipal supervisor can also be compared in 2011 and 2012. This is reflected in the graph below.



Graph 11 Comparison of the average total amount of time dedicated to environmental enforcement duties in 2011 and 2012

In contrast to the decrease in the average number of municipal supervisors per municipality the average amount of time dedicated per municipal supervisor remains fairly stable. Both in 2011 and in 2012 the municipal supervisor dedicated about 30% of his or her time to environmental enforcement duties.

Environmental enforcement inspections

In order to get an insight into the activities of municipal enforcement actors in the field, the table below not only shows the total number of environmental enforcement inspections carried out per category of municipalities, but also the average number of environmental enforcement inspections per supervisor, the average number of environmental enforcement inspections per FTE and the average amount of time dedicated to supervisory duties by supervisors in FTEs. The results of these inspections will then be discussed in the evaluation of the individual enforcement instruments in Chapter 3. The table below takes into account the total amount of time dedicated to environmental enforcement duties by the municipalities, which means both the number of FTEs dedicated to enforcement duties by the supervisors and the FTEs dedicated to the administrative support of environmental enforcement duties. As indicated earlier, the idea is to provide a more complete picture of the implementation of an inspection.

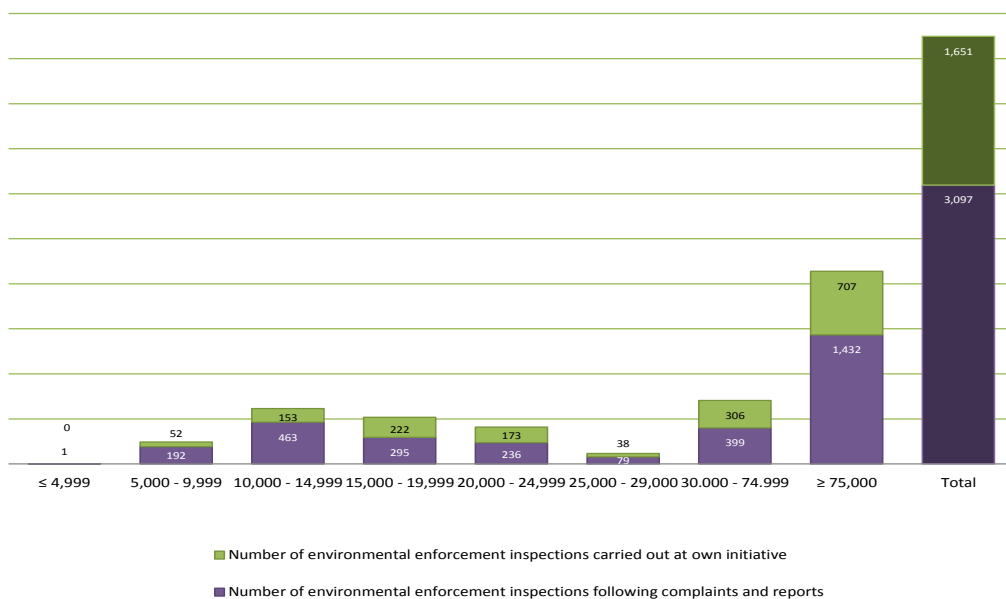
Population	Response	Number of appointed supervisors	Total amount of time dedicated to environmental enforcement duties in FTEs	Number of environmental enforcement inspections carried out	Average number of environmental enforcement inspections per supervisor	Average amount of time dedicated to environmental enforcement duties per supervisor (in FTEs)	Average number of environmental enforcement inspections per FTE
≤ 4,999	6	1.00	0.01	1	1.00	0.01	100.00
5,000 - 9,999	46	32.00	6.59	244	7.63	0.21	37.03
10,000 - 14,999	61	50.00	13.26	616	12.32	0.27	46.46
15,000 - 19,999	40	36.00	12.41	517	14.36	0.34	41.66
20,000 - 24,999	24	26.00	4.74	409	15.73	0.18	86.84
25,000 - 29,000	13	17.00	4.65	117	6.88	0.27	25.16
30,000 - 74,999	28	45.00	11.12	705	15.67	0.25	63.40
≥ 75,000	6	31.00	15.20	2,139	69.00	0.49	140.72
Total	224	238.00	67.95	4,748	19.95	0.29	69.87

Table 24 Efforts related to environmental enforcement duties by municipal supervisors per category of municipalities (according to population) in 2012

This table shows that the 238 municipal supervisors - who dedicated a total of 67.95 FTEs to environmental enforcement duties - together performed 4,748 environmental enforcement inspections in 2012. This is an average number of environmental enforcement inspections of 19.95 per supervisor and an average number of environmental enforcement inspections of 69.87 per FTE. This means that if each supervisor were able to focus full-time on environmental enforcement duties, a total of 16,629 environmental enforcement inspections would be carried out by the 238 appointed municipal supervisors. Due to the fact that the supervisors can dedicate on average less than 30% of their time to enforcement duties, only 4,748 inspections were carried out in total. These data would again make it possible to argue in favour of adjusting the Environmental Enforcement Act and Environmental Enforcement Decree in the sense that the number of FTEs to be dedicated to enforcement duties is defined, instead of the number of supervisors per municipality.

When looking at the number of performed environmental enforcement inspections, the average number of environmental enforcement inspections per supervisor and the average number of environmental enforcement inspections per FTE, a varied picture can be observed per category of municipalities. As the population grows, so does the average number of inspections per supervisor and the average number of inspections per FTE, except for the decrease in the category of municipalities with a population of between 25,000 and 29,000. In all the categories the average number of environmental enforcement inspections per FTE is always higher than the average number of inspections per supervisor. This is owing to the fact that the appointed supervisors dedicated only a limited amount of their time to environmental enforcement duties within the framework of the Environmental Enforcement Act.

Just like for the Environmental Enforcement Reports 2010 and 2011, the municipalities were asked, for the present report, to give the number of environmental enforcement inspections that were carried out following complaints and reports and the number of environmental enforcement inspections that were carried out at own initiative, for instance on the basis of an environmental enforcement programme. This is reflected in the graph below.



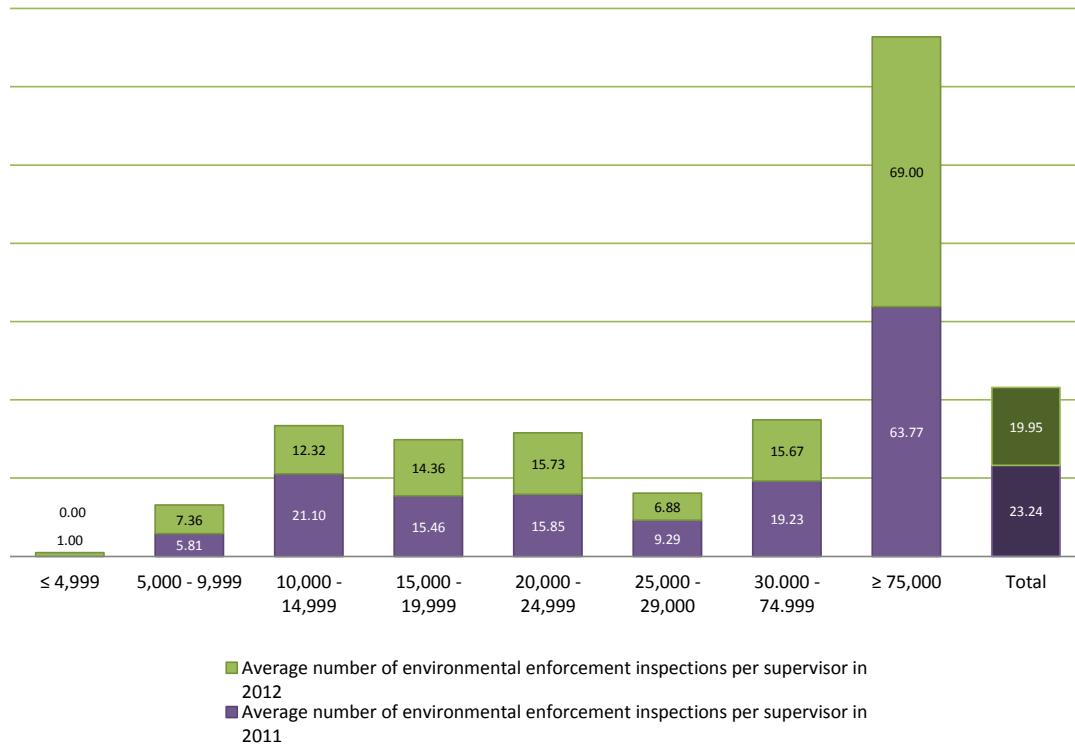
Graph 12 Number of environmental enforcement inspections carried out by municipal supervisors within the framework of the Environmental Enforcement Act - following complaints and reports and at own initiative in 2012

In 2012, a total of 4,748 environmental enforcement inspections were carried out by the municipal supervisors. 65% of these inspections were implemented following complaints and reports and 35% were proactive inspections carried out at own initiative, possibly within the framework of planned actions or an environmental enforcement programme. A striking element is that the share of reactive inspections in the smaller categories of municipalities (with a population smaller than 15,000) is remarkably higher than with the larger municipalities. This shows that the larger municipalities - with more inhabitants - dedicate more time to the planning and implementation of proactive inspections. This may be related to the fact that both the average amount of time dedicated by the municipal supervisors and the average amount of time dedicated in the municipality increase as the population of the municipalities grows.

The Environmental Enforcement Report 2011 reported that in 2011 a total of 4,740 environmental enforcement inspections were carried out by 204 municipal supervisors. The ratio of the reactive inspections vis-à-vis the proactive inspections amounted then to 63% and 37% respectively. Despite the fact that in 2011 an almost equal number of environmental enforcement inspections were carried out by a smaller number of municipal supervisors (a fact that is presented in the following graph), the ratio between the proactive and reactive inspections by municipal supervisors remains more or less stable.

The graphs below provide an overview of the average number of environmental enforcement inspections per municipal supervisor and the average number of inspections per FTE in 2011 and 2012. These figures were obtained by dividing the number of environmental enforcement inspections per category by the number of municipal supervisors per category and the total number of FTEs per category respectively. Just like with the regional supervisors and the local police supervisors, the total number of FTEs refers to the number of FTEs that were dedicated by the supervisor to environmental enforcement duties within the framework of the Environmental Enforcement Act and the number of FTEs dedicated to the administrative support of environmental enforcement duties. In this way account is taken of the different time-related aspects of supervisory duties.

The average number of environmental enforcement inspections per municipal supervisor in 2011 and 2012 is reflected in the graph below.



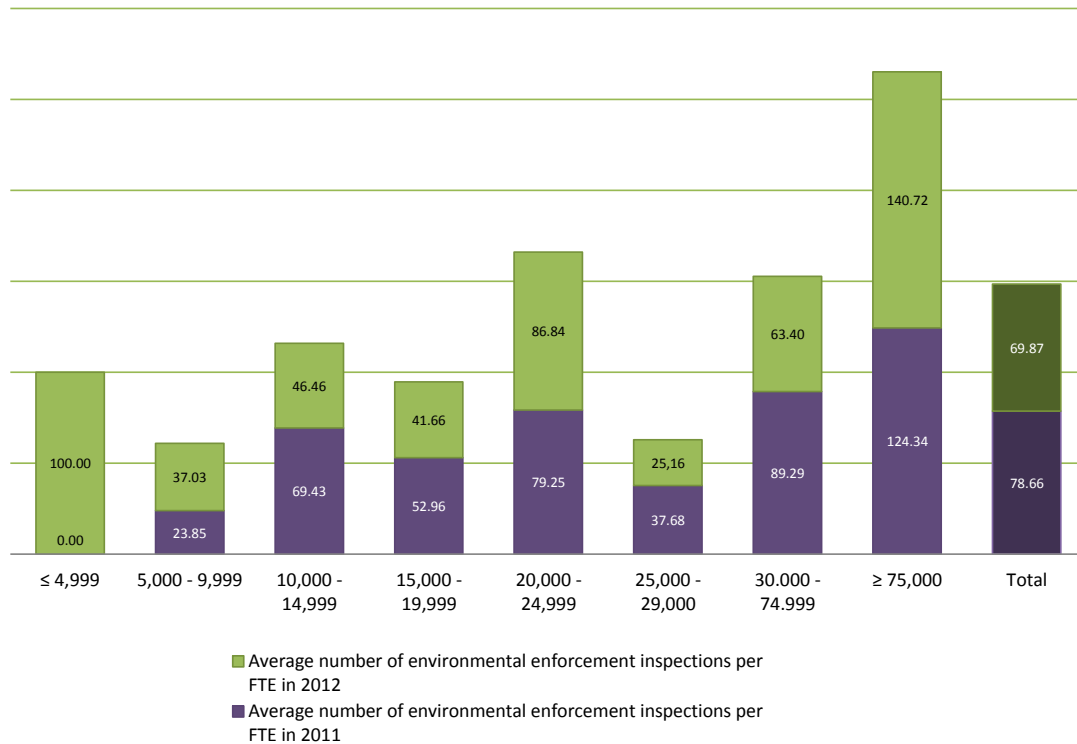
Graph 13 Average number of environmental enforcement inspections per municipal supervisor in 2011 and 2012

The above data show that the average number of environmental enforcement inspections per municipal supervisor amounted to 19.95 inspections in 2012. This is a decrease by almost 4 inspections compared to 2011 when the ratio was still 23.24 environmental enforcement inspections per municipal supervisor.

The decrease in the average number of environmental enforcement inspections per municipal supervisor is remarkable, given the increase in the number of municipal supervisors - from 204 in 2011 to 238 in 2012 - and can mainly be explained by an almost ex aequo number of performed environmental enforcement inspections (4,740 in 2011 and 4,748 in 2012) by these municipal supervisors.

This decrease manifested itself in the different categories, with exception of the largest category of municipalities and the two smallest categories of municipalities. In these categories the average number of performed environmental enforcement inspections per municipal supervisor increased slightly.

However, it is more precise to make a comparison between the average number of performed environmental enforcement inspections per FTE in the municipalities in 2011 and 2012, since the number of FTEs shows how much time was actually dedicated to environmental enforcement duties by the appointed municipal supervisors. The average number of environmental enforcement inspections per FTE in 2011 and 2012 is reflected in the graph below.



Graph 14 Average number of environmental enforcement inspections per FTE in 2011 and 2012


The graph above shows that a strong decline in the average number of inspections per FTE can be observed in 2012. Compared to 2011, this is a decrease of almost 9 inspections per FTE.

Despite the fact that in 2012 a lot more municipalities had a supervisor at their disposal, that more municipal supervisors were appointed, and that more FTEs were dedicated in total to environmental enforcement duties, the number of performed inspections and the average amount of time dedicated per supervisor remained more or less stable and the number of supervisors per municipality decreased, as well as the average number of inspections per municipal supervisor and the average number of inspections per FTE. This means that more time/a larger number of FTEs was dedicated per inspection. This may be explained by the fact that the new supervisors had not settled into their jobs yet.

The decrease in the average number of environmental enforcement inspections per FTE could only be recorded, however, for half of the different categories of municipalities. In the two smallest categories, the category of municipalities with a population of between 20,000 and 24,999 and the category of municipalities with the largest number of inhabitants, the average number of inspections per FTE rose in 2012.

2.3.7 Intermunicipal associations

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



supervisory duties in the municipalities that belong to the intermunicipal association.

Since the Environmental Enforcement Act has become effective in 2009, the intermunicipal associations have become increasingly important in the environmental enforcement landscape. Organising the monitoring of compliance with environmental law via an intermunicipal association indeed has a number of advantages. For instance, it may be interesting for smaller municipalities to organise themselves this way. The appointment of an intermunicipal supervisor could lead to a scale increase in terms of the expertise and geographical availability of the supervisor. As the position of supervisor is currently not required to be full-time equivalent, and in smaller municipalities it is often combined with other duties, the appointment of a full-time equivalent within an intermunicipal association can only increase the expertise of this supervisor. Furthermore, it would be recommendable to appoint several supervisors within an intermunicipal association, because in this way supervisors would not have to perform any inspections in their own municipalities. At the same time, the appointment of intermunicipal supervisors could result in a separation between the functions of supervisor and adviser in the licensing procedure and the problem of a supervisor acting also as adviser within the framework of an environmental licence application is avoided.

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

Five intermunicipal associations completed the VHRM questionnaire for the present environmental enforcement report.

A first intermunicipal association communicated that in 2012 a total of 20 municipalities called in its services in the field of environmental enforcement. Within this intermunicipal association six supervisors were appointed who together dedicated less than 1 FTE to environmental enforcement duties under the Environmental Enforcement Act. In addition, less than 1 FTE was dedicated to the administrative support by non-supervisors. In total, these six supervisors carried out 32 inspections, of which 94% following complaints and reports. Just over 6% of the total number of inspections were carried out at own initiative. During 15 of these 32 inspections no breach was identified, whereas during 17 inspections a breach was identified. However, 35 exhortations were formulated. The identified breaches were dealt with by means of 4 exhortations, one administrative measure and 6 official reports.

The second responding intermunicipal association indicated that, in 2012, 14 municipalities called in its services with regard to environmental law enforcement. The intermunicipal association had 4 supervisors at its disposal within its organisation who jointly dedicated 1.3 FTEs to environmental enforcement duties. In addition, 0.2 FTEs were dedicated to the administrative support by non-supervisors within the intermunicipal association. No fewer than 49 inspections were carried out following complaints and reports and 51 proactive inspections were implemented. The intermunicipal supervisors formulated 91 recommendations and drew up 9 official reports.

Within the third responding intermunicipal association 12 municipalities called in its services for purposes of environmental law enforcement in 2012. However, no supervisor was available (yet) within this intermunicipal association. Therefore, no environmental enforcement inspections were carried out in the

context of the Environmental Enforcement Act. The intermunicipal association did, however, handle 65 environmental licence applications for these 12 municipalities.

One intermunicipal supervisor in the fourth responding intermunicipal association was responsible for environmental enforcement in two municipalities in 2012. The supervisor dedicated 0.05 FTEs to environmental enforcement duties in the context of the Environmental Enforcement Act and carried out 9 environmental enforcement inspections. Six inspections were carried out following complaints and reports. The other 3 inspections were performed at own initiative. No breach was identified during 2 inspections. During the other seven inspections a breach was identified. Three times an exhortation was formulated, three official reports were drawn up and in one case administrative measures were taken.

The fifth responding intermunicipal association started in 2012 with a specific interlocal association for environmental enforcement and was still in its start-up phase throughout the year. During this period 2 interlocal supervisors were appointed. This association expects to hit cruising speed in 2013. In 2012, 18 municipalities had joined this specifically established interlocal association for environmental enforcement.

It is apparent from the completed questionnaires which VHRM received from the intermunicipal associations that this specific form of local supervision is still in full development. Naturally, this development will be further reported on in future environmental enforcement reports.

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

RECYCLE, WASTE, PAPER

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

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

The idea is to obtain insight into the use of all the resources that were made available to enforcement actors to reach their objectives. Particular attention will be paid to whether certain instruments are used less often, for example because they are new instruments which the enforcement actors are less familiar with, or which they avoid using due to a lack of knowledge and expertise.

In this report the enforcement instruments are compared against the number of implemented enforcement inspections during which a breach was identified, just like in the Environmental Enforcement Reports 2010 and 2011. In the Environmental Enforcement Report 2009 these were compared for each actor with the total number of performed inspections. The advantage of comparing with the number of inspections during which a breach was identified is that the use of the instruments can be reflected when necessary, with the exception of recommendations. At the same time a picture is provided of the total number of inspections compared to the number of inspections during which a breach was identified. This makes it possible to comment on the actors' degree of compliance and targeted enforcement.

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

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

The different enforcement instruments are discussed in the chapter below.

When analysing the figures, it is important to keep in mind that in 2012 the inspections and violations in the framework of the Flemish Parliament Act on Manure were included in the figures for the VLM, in addition to the figures regarding violations in the context of the Environmental Enforcement Act. Counts in the framework of the Flemish Parliament Act on Manure were *not* included in the figures of the Environmental Enforcement Reports 2009, 2010 and 2011.



3.1. 'Inspections during which a breach was identified'

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

Enforcement actor	Total number of inspections in 2012	Number of 'inspections during which no breach was identified'	% share in 2012	Number of 'inspections during which a breach was identified'	% share in 2012
ALBON	263	207	78.71 %	56	21.29 %
AMI	11,78	10,922	92.72 %	858	7.28 %
AMV	409	207	50.61 %	202	49.39 %
ANB	7,754	6,631	85.52 %	1,123	14.48 %
AWZ	-	-	-	-	-
AWV	/	/	/	/	/
AZG	4,613	1,495	32.41 %	3,118	67.59 %
nv De Scheepvaart	-	-	-	-	-
OVAM	700	341	48.71 %	359	51.29 %
VLM	3,209 ³⁵	2,482	77.34 %	727	22.66 %
VMM - Water Reporting Division	22	0	0 %	22	100 %
MOW					
Provincial supervisors	1	0	0 %	1	100 %
Municipal supervisors	4,748	643	13.54 %	4,105	86.46 %
Local police supervisors	3,132	208	6.64 %	2,924	93.36 %
Total	36,631	23,136	63.16 %	13,495	36.84 %

Table 25 Comparison between the number of 'inspections during which no breach was identified' and the number of 'inspections during which a breach was identified' for 2012

The above table shows that a total of 36,631 environmental enforcement inspections were carried out

³⁵ We remark in this context that the figure 3,209 includes both the follow-up and initial inspections. The number of inspections during which no breach was identified, namely 2,482, only pertains to initial inspections, because it is difficult for follow-up inspections to make an estimation of the number of follow-up dossiers with or without a breach (for instance, re-inspection with the same conclusion, answering notes or an EFA form...). Therefore, the number 727 is actually an overestimation of the number of inspections during which a breach was identified. In the following tables, the number 727 has each time been used for the number of inspections during which a breach was identified, which gives a

by the supervisory bodies in the Flemish Region in 2012. In 2011, this number amounted to 28,641. As indicated earlier, this increase in the number of performed environmental enforcement inspections can mainly be explained by the growing number of inspections by the Agency for Care and Health. In 2011, the Agency for Care and Health carried out 39 inspections, whereas 4,613 inspections were reported for 2012. The reason for this increase was already explained in Chapter 2.

During 23,136 of the total of 36,631 environmental enforcement inspections that were carried out no breach was identified, which comes down to 63.16%, whereas during 13,313 inspections or 36.34% a breach was identified. In 2011, this ratio amounted respectively to 67.78% compared to 32.22%, and in 2010 to 67.03% compared to 32.93%. This ratio remains relatively constant, which means that a breach is identified during about one-third of the environmental enforcement inspections.

Possible causes for this percentage may be a high compliance rate or the lack of a risk-oriented approach and targeted supervision. Another possible cause is the fact that citizens have become more assertive. Complaints are often reported to supervisors that lead to an inspection, but which are not classified as a breach.

When looking at the different enforcement actors separately, we get a different picture of the ratio of the number of inspections during which a breach was identified or not. The percentage of the number of inspections during which a breach was identified vis-à-vis the total number of performed environmental enforcement inspections is very high among municipal and local police supervisors, namely more than 85% of the inspections, whereas this is much lower for most regional enforcement inspections. This can probably be explained by the fact that with local supervisors the number of inspections following complaints and reports is higher than the number of inspections at own initiative. It can indeed be expected that more breaches will actually be identified during inspections that are carried out following complaints and reports.


It is difficult to draw conclusions about the compliance rate on the basis of this table. There are several reasons for this. The Environmental Inspectorate Division gives the following reasons for the operation of its service and the processing of the data:

- ▶ The fact is that several inspections can take place for one single breach, namely inspections before the actual identification of the breach, as well as inspections after the identification of the breach. The former inspections are inspections during which several identifications are made which finally lead to the conclusion that a breach took place. The latter inspections by the Environmental Inspectorate Division are called progress inspections. They are aimed at remediation or the return to conformity.

In order to avoid double counts of the breaches, AMI has in its reports linked each breach to one single inspection and not to the prior inspections or the related progress inspections. However, because prior inspections and progress inspections are also carried out, there is a one-to-many relation in the breaches (one breach for several inspections). As a result, the compliance rate is to be adjusted downwards, at least for the Environmental Inspectorate Division.

- ▶ On the other hand, an inspection service never inspects *all* the legal subordinates (no 100%

slightly distorted picture. This applies to table 23 as well as to tables 24, 27 and 30. For future reports it is advised to give separate figures for initial and follow-up inspections or to only use initial dossiers (for 2012: 578 instead of 727 inspections).



coverage with our inspections) and not all inspections are integrated inspections (during which all applicable provisions are checked). Therefore, no general conclusions can be drawn as to the compliance rate (as it cannot be measured whether the non-inspected parties comply with the law).

- ▶ Another element to be taken into account is that, as a rule, AMI examines the compliance with several regulations during inspections. If a breach is identified during an inspection, this does not mean that there is no compliance, but that at least one rule is not complied with, whereas a lot of other rules probably are complied with. This would mean that the compliance rate is to be adjusted upwards.

These are some of the reasons why prudence is called for when drawing conclusions about the compliance rate solely on the basis of the percentage 'inspections during which no breach was identified', at least for the Environmental Inspectorate Division.

3.2 'Inspections with unknown results'

Through the survey among the environmental enforcement actors it was examined how many inspections had unknown results. This was done by deducting the number of inspections without further action and the total number of times an instrument was used from the total number of inspections. This is thus always a minimum number, since several instruments can be used during an inspection. In the table below the number of 'inspections with unknown results' is compared to the total number of environmental enforcement inspections carried out by the enforcement actor.


Enforcement actor	Total number of inspections In 2012	Number of 'inspections with unknown results'	% share in 2012	% share in 2011
ALBON	263	0	0.00 %	0.00 %
AMI	11,780	0	0.00 %	0.00 %
AMV	409	184	44.99 %	82.64 %
ANB	7,754	0	0.00 %	0.00 %
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	4,613	0	0.00 %	0.00 %
nv De Scheepvaart	-	-	-	-
OVAM	700	0	0.00 %	0.00 %
VLM	3,209	457	14.24 %	0.00 %
VMM - Water Reporting Division	22	20	90.91 %	
MOW				
Provincial supervisors	1	0	0.00 %	-
Municipal supervisors	4,748	1,413	29.76 %	27.51 %
Local police supervisors	3,132	1,257	40.13 %	62.71 %

Table 26 Number of 'inspections with unknown results'

The above table shows that for 5 environmental enforcement actors the result of part of the inspections is unknown, namely for the Environmental Licences Division, the Flemish Land Agency, the Flemish Environment Agency, the municipal supervisors and the local police supervisors.

The Flemish Environment Agency indicated that 20 of the total of 22 inspections that were carried out in 2012 were inspections that were performed in collaboration with other supervisors who drew up an official report themselves or used another instrument. Consequently, the result of more than 90% of the performed inspections is unknown.

The Environmental Licences Division reported that the result of 182 of the 409 environmental enforcement inspections that were carried out in total was still unknown, as the investigation was still ongoing when the survey for the present environmental enforcement report was closed. For 20 inspections that



were carried out by AMV it can be said with certainty that a breach was identified. So as not to give a distorted picture, only these inspections are taken into account in the different subjects in Chapter 3. In addition, it was communicated that the division proposed a withdrawal of the recognition following two inspections. At the time of the survey one withdrawal was pronounced by the Minister. No judgement was known yet about the other withdrawal proposal. In comparison to 2011, however, a decrease can be observed in the number of inspections with unknown results. In 2011, this concerned 100 of the total of 121 performed inspections, which was more than 82%.

With the Flemish Land Agency as well, the result of at least 457 inspections was unknown. This could possibly be explained by the fact that the Flemish Land Agency often formulated oral recommendations, but that these were not always registered by the supervisors.

It can be deduced from the table above that in comparison to 2011 a decrease can be observed in the percentage share of inspections with unknown results among municipal and local police supervisors in 2012. This may point to an improved monitoring. Good monitoring is indeed crucial for efficiently drawing up the environmental enforcement report. Complete and accurate information is to be used as much as possible, since each inspection with unknown results means that only an incomplete evaluation can be made for the relevant actors and the whole set of instruments.

3.3 'Inspections without further action'


In the survey the environmental enforcement actors were asked about the number of inspections carried out during which breaches – either environmental infringements or environmental offences – of the applicable environmental law were identified, but for which no action was taken. In the table below the number of 'inspections without further action' is compared to the total number of 'inspections during which a breach was identified' by the enforcement actor in 2012. In addition, the percentage share of these 'inspections without further action' in 2012 and 2011 is given.

Enforcement actor	Number of 'inspections during which a breach was identified'	Number of 'inspections without further action'	% share in 2012	% share in 2011
ALBON	56	0	0.00 %	0.00 %
AMI	858	0	0.00 %	0.00 %
AMV	20	1	5,00 %	0.84 %
ANB	1,123	0	0.00 %	0.00 %
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	3,118	2,866	91.92 %	0.00 %
nv De Scheepvaart	-	-	-	-
OVAM	359	0	0.00 %	0.00 %
VLM	727	0	0.00 %	0.00 %
VMM - Water Reporting Division	22	0	0.00 %	
MOW				
Provincial supervisors	1	0	0.00 %	-
Municipal supervisors	4,105	96	2.34 %	2.3 %
Local police supervisors	2,924	18	0.62 %	4.13 %
Total	13,313	2,981	22.39 %	1.00 %

Table 27 *Number of 'inspections without further action' compared to the total number of 'inspections during which a breach was identified' in 2011 and 2012*

The above table shows that for more than one-fifth of the total of 13,313 inspections during which a breach was identified no further action was taken with respect to the identified breach. This is a strong increase compared to the data from the Environmental Enforcement Report 2011. In 2011, no action was taken with regard to the identified offence or environmental infringement for barely 93 of the total of 9,229 inspections during which a breach was identified.

The majority of these inspections, namely 2,866, were carried out by the Agency for Care and Health. For no less than 91.92% of the inspections performed by the Agency for Care and Health during which a breach was identified, no action was taken with regard to the identified breach. This could be explained



by the fact that the identified breaches were environmental infringements. Supervisors can draw up an identification report when they identify an environmental infringement, but are not under the obligation to do so. It is the supervisor's discretionary power to decide whether or not to act against identified environmental infringements.

Inspections without further action can also be observed within the Environmental Licences Division and among municipal and local police supervisors, besides the Agency for Care and Health. For AMV this can be explained by the fact that the supervisory authority for the identified breach was not with AMV. For the other bodies identified environmental infringements can again be given as potential explanation. All in all, an increase can be recorded, in comparison with 2011, in the percentage share of inspections without further action with respect to the inspections during which a breach was identified. Exceptions are the local police forces where a decrease can be observed and the municipal supervisors where this ratio has remained about the same.

3.4 Evaluation of the instrument ‘recommendation’

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


Since the ‘recommendation’ is a preventative instrument and can therefore only be used if no offence was identified, the number of recommendations is compared to the number of inspections during which no breach was identified. When interpreting the data below, however, account should be taken of the fact that during an inspection a breach can be identified and that, apart from the application of an exhortation, an identification report or an official report, a recommendation is also formulated during that same inspection with regard to any possible future breaches. An overestimation in terms of percentage of the number of formulated recommendations with regard to the number of inspections during which no breach was identified can therefore not be excluded.

The table below gives an overview of the application of the instrument ‘recommendation’ by the different supervisory actors.

Enforcement actor	Number of ‘inspections during which no breach was identified’	Number of ‘recommendations’ by supervisors	% share in 2012	% share in 2011
ALBON	207	18	8.70 %	13.96 %
AMI	10,922	139	1.27 %	1.20 %
AMV	207	6	2.90 %	400 %
ANB	6,631	0	0.00 %	0.00 %
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	1,495	486	32.51 %	0.00 %
nv De Scheepvaart	-	-	-	-
OVAM	341	61	17.89 %	50.00 %
VLM ³⁶	2,482	0	0.00 %	-
VMM - Water Reporting Division	0	1	-	
MOW				
Provincial supervisors	0	0	0.00 %	0.00 %
Municipal supervisors	643	1,647	256.14 %	139.56 %
Local police supervisors	208	564	271.15 %	2.39 %

Table 28 Number of ‘recommendations’ made by supervisors compared to the total number of ‘inspections during which no breach was identified’

36 The instrument ‘recommendation’ is often given orally by the VLM inspectors and is mostly not recorded by the supervisors.



It can be deduced from the above table that 2,922 recommendations were formulated on a total of 23,136 inspections during which no breach was identified. This comes down to 12.62%. In 2011, this ratio amounted to 10.48% and in 2010 to 7.45%. A steady increase can thus be recorded in the share of recommendations that were formulated. There is also a rise in absolute figures, from 1,724 recommendations in 2010 to 2,035 in 2011 and to 2,922 in 2012. This shows that more preventive action is taken by supervisors during inspections during which no breach was identified in order to prevent an environmental infringement or environmental offence. However, account is to be taken of the fact that there is not always the risk of an environmental infringement or environmental offence during each inspection.

Still, the data in the above table clearly show a distinction between the regional supervisory bodies on the one hand and the municipal supervisors and local police supervisors on the other hand. Regional supervisory bodies use the instrument 'recommendation' to a far lesser extent than municipal and local police supervisors. The latter formulate on average more than 2.5 recommendations for each inspection during which no breach was identified. This ratio is much lower with regional supervisory bodies. At first sight this could lead us to conclude that preventive action is mainly taken and recommendations are mainly formulated at the local level when supervisors, from their position of proximity, establish that an environmental infringement or environmental offence threatens to occur and try to prevent it. However, in reality, regional supervisors also take preventive action, for instance by giving oral recommendations. Still, these are not registered. Besides, prevention implies more than just giving recommendations. The fact that supervision is exercised (policy of presence in the field) also has a preventive effect. This should be taken into account in the interpretation of the figures.

As far as the Environmental Inspectorate Division is concerned, account should be taken of the fact that prior inspections and progress inspections are included in the number of inspections during which no breach was identified. The ratio between the recommendation and the number of inspections during which no breach was identified should therefore be put in the right context.

3.5 Evaluation of the instrument ‘exhortation’

For the instrument ‘exhortation’ a clear definition can be found in DABM as well. Article 16.3.27 of DABM states: ‘When supervisors, during the performance of their supervisory duties, identify an environmental infringement or an environmental offence, they may exhort the suspected offender and any other parties involved to take the necessary measures to end this environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition’.

The table below shows the figures relating to the use of the instrument ‘exhortation’ compared to the total number of inspections during which a breach was identified in 2012. These figures were given by the different environmental enforcement actors. This percentage ratio is also given for 2011 for purposes of comparison.

Enforcement actor	Number of ‘inspections during which a breach was identified’	Number of ‘exhortations’ by supervisors	% share in 2012	% share in 2011
ALBON	56	56	100 %	94.74 %
AMI	858	1,318	153.61 %	158.38 %
AMV	202	11	5.45 %	8.40 %
ANB	1,123	540	48.09 %	41.60 %
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	3,118	196	6.29 %	91.30 %
nv De Scheepvaart	-	3	/	-
OVAM	359	352	98.05 %	101.92 %
VLM	727	134	18.43 %	179.57 %
VMM - Water Reporting Division	22	0	0.00 %	
MOW				
Provincial supervisors	1	0	0.00 %	-
Municipal supervisors	4,105	900	21.92 %	30.93 %
Local police supervisors	2,924	633	21.65 %	6.45 %

Table 29 *Number of ‘exhortations’ formulated by supervisors compared to the total number of ‘inspections during which a breach was identified’*

The above table indicates that in 2012 as well the instrument ‘exhortation’ was frequently used. All the supervisory actors, apart from the provincial supervisors and the supervisors of the VMM, used the instrument ‘exhortation’. The extent to which the instrument was used differs between actors, however. It can be concluded, for instance, that ALBON formulated an exhortation for each inspection during which a breach was identified. This need not be a one-to-one relation, since several exhortations can be formu-

lated for one single inspection during which a breach was identified.³⁷ In this case the percentage use of the instrument 'exhortation' by municipal or local police supervisors, for instance, is lower and amounts to approximately a one-fifth ratio.

In total, 4,143 exhortations were formulated in 2012 for 13,313 inspections during which a breach was identified. This is an average percentage share of 31.12%. This ratio was 41% in the Environmental Enforcement Report 2011. This points to a decrease in the percentage share of exhortations with respect to the inspections during which a breach was identified. This decrease can mainly be attributed to the Flemish Land Agency and the Agency for Care and Health. With other actors an increase in the use of the instrument 'exhortation' can be reported, such as the local police supervisors and the Environmental Licences Division. In 2011, the local police supervisors jointly formulated 192 exhortations in total. In 2012, this number rose to 633 exhortations. For AMV, an increase was recorded from 8.40% to 55%. This points to a more differentiated use of the instruments of the Environmental Enforcement Act by these supervisory actors.

When comparing the 2011 figures for the VLM, account should be taken of the fact that in 2011 only the violations in the framework of the Environmental Enforcement Act were counted, whereas in 2012 the violations under the Flemish Parliament Act on Manure were included as well.

37 In this framework it can be remarked that the supervisors of AMI also give exhortations following progress inspections, inspections which - to avoid double counts - were not reported as inspections during which a breach was identified and are thus counted among the inspections during which no breach was identified.

3.6 Evaluation of the instrument ‘identification report’

The ‘identification report’ is an enforcement instrument which was created with the coming into force of the Environmental Enforcement Act on 1 May 2009. One of the most important changes in the Environmental Enforcement Act is the decriminalisation of certain administrative infringements of environmental regulations with a limited effect on the environment, according to six cumulative criteria to be met by such infringements. This resulted in a list, included as 12 annexes to the Decree of 12 December 2008, of behaviour that qualifies as an environmental infringement. This type of behaviour is thus no longer punishable. The identification report is the instrument for reporting environmental infringements³⁸, so that an exclusive administrative sanction can then be applied. Supervisors can draw up such an identification report, but are not under the obligation to do so. Supervisors have discretionary power in this respect and can therefore judge themselves whether its use is appropriate.

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

38 Although the identification report, as well as the official report, can be described as ‘instruments’ that are available to supervisors in the context of environmental enforcement, they are not administrative instruments in themselves, but a way to report breaches to a body that imposes sanctions.

Enforcement actor	Number of 'inspections during which a breach was identified'	Number of 'identification reports' by supervisors	% share in 2012	% share in 2011
ALBON	56	0	0.00 %	0.00 %
AMI	858	3	0.35 %	0.11 %
AMV	202	0	0.00 %	0.00 %
ANB	1,123	4	0.36 %	0.33 %
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	3,118	0	0.00 %	0.00 %
nv De Scheepvaart	-	15	-	-
OVAM	359	39	10.86 %	2.19 %
VLM	727	0	0.00 %	0.00 %
VMM - Water Reporting Division	22	0	0.00 %	
MOW				
Provincial supervisors	1	0	0.00 %	-
Municipal supervisors	4,105	16	0.39 %	0.96 %
Local police supervisors	2,924	0	0.00 %	0.13 %

Table 30 Number of 'identification reports' drawn up by supervisors compared to the number of 'inspections during which a breach was identified'

In comparison with the other instruments, it can generally be concluded that the instrument 'identification report' is not often used. In total, 77 identification reports were drawn up. This is a small increase compared to the 51 identification reports that were drawn up by supervisory bodies in 2011. This slight increase is mainly owing to the increase in the number of identification reports drawn up by OVAM, namely 8 identification reports in 2011 and 39 in 2012, and the identification reports drawn up by nv De Scheepvaart. With the municipal supervisors the number of identification reports fell from 34 in 2011 to 16 in 2012. While the local police supervisors still drew up 4 identification reports in 2011, the instrument was not used at all in 2012.

As indicated earlier, the low number of identification reports does not imply that the number of environmental infringements that were identified in 2012 has decreased. Supervisors can in fact decide for themselves whether or not to draw up an identification report for the identified environmental infringement.

The VLM does not use the identification report. It does, however, draw up 'inspection reports' for inspections without infringements or for inspections during which an infringement was identified that comes under the Flemish Parliament Act on Manure. These inspection reports are not submitted to the AMMC, however.

In advance of the figures in the next chapter a discrepancy can be found for 2012 as well - just like in

the previous reports - in the number of identification reports that were drawn up and communicated by supervisory bodies and the number of reports that were actually referred to the Environmental Enforcement, Environmental Damage and Crisis Management Division (AMMC) of the Department of Environment, Nature and Energy. The above table indicates that ANB and OVAM drew up respectively 4 and 39 identification reports in 2012. The AMMC communicated actually having received 4 and 39 identification reports from these supervisory bodies. NV De Scheepvaart and the municipal supervisors on the other hand reported having drawn up respectively 15 and 16 identification reports, but the AMMC did not receive any identification reports from these actors. This shows that supervisors not only have discretionary power to draw up the instrument, but in addition do not have the obligation to actually refer the identification report concerned to the AMMC in view of the imposition of an exclusive administrative fine. The AMMC also indicated having received 4 identification reports from the Environmental Inspectorate Division, whereas this supervisory actor communicated only having drawn up three such reports. These data point to a certain deviation in the obtained figures.

3.7 Evaluation of the instrument ‘official report’

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

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

Enforcement actor	Number of ‘inspections during which a breach was identified’	Number of ‘official reports’ by supervisors	% share in 2012	% share in 2011
ALBON	56	0	0.00 %	2.63 %
AMI	858	451	52.56 %	62.71 %
AMV	202	0	0.00 %	0.00 %
ANB	1,123	583	51.91 %	58.40 %
AWZ	-	-	-	-
AWV	-	65	-	-
AZG	3,118	0	0.00 %	8.70 %
nv De Scheepvaart	-	15	-	-
OVAM	359	36	10,03 %	11.51 %
VLM	727	136	18.71 %	73.12 %
VMM - Water Reporting Division	22	1	4.55 %	
MOW				
Provincial supervisors	1	2	200 %	-
Municipal supervisors	4,105	369	8.99 %	9.56 %
Local police supervisors	2,924	596	20.38 %	27.45 %

Table 31 Number of ‘official reports’ drawn up by supervisors compared to the number of ‘inspections during which a breach was identified’

In 2012, an official report was drawn up for 2,254 of the total of 13,495 inspections during which a breach was identified. The data from the above table point to the existing pragmatic approach of Article 29 of the Code of Criminal Procedure which stipulates that when an offence is identified an official report is to be drawn up and that this official report is to be referred to the Public Prosecutor. Taking into account the limitations of the figures and the fact that the identified breaches could also be environmental infringements, it can be concluded that each enforcement actor - with the exception of the provincial supervisors

- also uses instruments other than the official report to achieve the intended goal, without always having to initiate criminal proceedings for this. In addition, the percentage share of the number of drawn up official reports with respect to the number of inspections during which a breach was identified decreased for all enforcement actors in 2012 compared to 2011, which points to a percentage decrease in the use of the instrument 'official report'. The number of official reports also declined in absolute figures in 2012, while the number of inspections during which a breach was identified rose. In 2011, a breach was identified during 9,229 inspections and a total of 2,582 official reports were drawn up by the supervisory bodies.

The table above shows that the percentage use of the instrument 'official report' by local police supervisors decreased in 2012 compared to 2011. In 2011, an almost equal number of inspections were carried out during which a breach was identified, namely 2,976 compared to 2,924 in 2012. However, more official reports were drawn up in 2011, namely 817 (only 596 in 2012). The previous section on exhortations already pointed out that local police supervisors are making more frequent use of the instrument 'exhortation'. These two facts reveal a more differentiated use of the instruments of the Environmental Enforcement Act by local police supervisors.

In the previous environmental enforcement reports as well a potential field of tension could be observed between Article 29 of the Code of Criminal Procedure and the enforcement practice. Within the framework of the Flemish High Council of Environmental Enforcement a memorandum was therefore drawn up which - from various angles and scenarios - examined how a solution can be found for the field of tension in which a supervisor finds him or herself when he or she is confronted with an environmental offence.

3.8 Evaluation of the instrument ‘administrative measure’ and ‘appeals against decisions to impose administrative measures’

3.8.1 Evaluation of the instrument ‘administrative measure’

Just like for the previous Environmental Enforcement Reports, it was also decided for the present report to consider and evaluate ‘administrative measures’ as an environmental enforcement instrument. In accordance with the provisions of Chapter IV of the Environmental Enforcement Act, the imposition of administrative measures is part of administrative enforcement, together with the imposition of administrative fines. In this sense, we could also have discussed administrative measures in Chapter 4.2. However, it was opted to pronounce upon the use of the entire set of enforcement instruments available to supervisors in the field in the conclusion of the present chapter.

Articles 16.4.5 through 16.4.18 of Title XVI of DABM lay down the rules for the imposition, the repeal, the implementation, the appeal against and the petition for the imposition of administrative measures. Appeals against decisions to impose administrative measures will be discussed in greater detail in Chapter 3.8.2.

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

- ▶ an order to the suspected offender to take measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
- ▶ an order to the suspected offender to end activities, works, or the use of objects;
- ▶ an actual action of the persons mentioned in Article 16.4.6, at the expense of the suspected offender, to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
- ▶ a combination of the measures mentioned in 1°, 2° and 3°.

The table below gives an overview of the total number of imposed administrative measures in relation to the number of inspections during which a breach was identified per enforcement actor.

Enforcement actor	Number of 'inspections during which a breach was identified'	Number of imposed administrative measures by supervisors	% share in 2012	% share in 2011
ALBON	56	0	0.00 %	0.00 %
AMI	858	24	2.80 %	5.82 %
AMV	20	0	0.00 %	0.00 %
ANB	1,123	159	14.16 %	9.23 %
AWZ	-	-	-	-
AWV	-	-	-	-
AZG	3,118	0	0.00 %	0.00 %
nv De Scheepvaart	-	25	-	-
OVAM	359	2	0.56 %	1.37 %
VLM	727	20	2.75 %	13.98 %
VMM - Water Reporting Division	22	0	0.00 %	
MOW				
Provincial supervisors	1	0	0.00 %	-
Municipal supervisors	4,105	200	4.87 %	3.72 %
Local police supervisors	2,924	194	6.63 %	1.24 %

Table 32 Number of imposed administrative measures compared to the number of 'inspections during which a breach was identified'

In the analysis below account should be taken of the fact that this comparison should be put in the right context for the Environmental Inspectorate Division. Especially in cases in which the Environmental Inspectorate Division takes an administrative measure, prior inspections and progress inspections (often several ones) will be carried out. Therefore, for the Environmental Inspectorate Division there is a one-to-many relation between the administrative measures and the number of inspections that are carried out in the framework of the administrative measure.

In 2012, a total of 624 administrative measures were imposed by the supervisors. This is considerably more than the 349 administrative measures imposed in 2011. This increase can mainly be attributed to the number - in absolute figures - of administrative measures imposed by municipal supervisors and local police supervisors. In 2011, 131 administrative measures were imposed by municipal supervisors and in 2012 this number rose to 200. In 2011, local police supervisors imposed 37 administrative measures. In 2012, this was raised by 157. The percentage share of the imposed administrative measures with respect to the number of inspections during which a breach was identified increased for this actor in 2012 compared to 2011. This points once again to the increasingly differentiated use of the instruments of the Environmental Enforcement Act by local police supervisors, as indicated in the section on exhortations and official reports.

With the regional supervisory bodies a diverse use of the instrument 'administrative measure' can be

observed. In 2012, 159 administrative measures were imposed with the Agency for Nature and Forests, which is a share of almost 15% of the number of inspections during which a breach was identified and which is an increase compared to 2011. In 2011, 112 administrative measures were imposed, which is a share of almost 10% of the number of inspections during which a breach was identified. Except for the Agency for Nature and Forests there are regional supervisory bodies which made little or no use of the instrument 'administrative measure' in 2012.

The table on the next page gives an overview of the share of the different types of administrative measures in relation to the total number of administrative measures imposed per enforcement actor in 2011 and 2012.

In the survey for the present environmental enforcement report - by analogy with that for the Environmental Enforcement Reports 2010 and 2011 - an additional question was included about the number of administrative measures that were imposed following a petition. Article 16.4.18 of Title XVI of DABM stipulates that people who meet one of the following descriptions may file a petition for the imposition of an administrative measure:

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

Each petition for the imposition of an administrative measure must be addressed to the people in charge of its implementation. Article 16.4.6 Title XVI of DABM stipulates that supervisors, for the environmental legislation to which their supervisory duties are related, the governor of a province or his or her deputy, for the environmental infringements or environmental offences, appointed by the Government of Flanders, and the mayor or his or her deputy, for the environmental infringements or environmental offences, appointed by the Government of Flanders, are all authorised to respond to petitions for the imposition of an administrative measure. That is why the table below reflects the number of administrative measures that were imposed following a petition, next to the types of administrative measures.

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

Enforcement actor	Administrative measures																													
	Prohibition order						Regularisation order						Administrative enforcement						A combination of the mentioned administrative measures				Imposed following a request				It was impossible to have the administrative measure implemented within the set term			
	2011		2012		2011		2012		2011		2012		2011		2012		2011		2012		2011		2012							
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%						
ALBON	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0						
AMI	16	31.37	6	25	25	49.02	15	62.5	2	3.92	-	-	8	15.69	3	12.5	1	2	-	-	0	0	0	0						
AMV	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0						
ANB	25	22.32	10	6.29	49	43.75	106	66.67	0	0	0	0	38	33.93	43	27.04	2	0	5	9	-	-	-	-						
AWZ	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-						
AWV	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-						
AZG	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0						
nv De Scheepvaart	-	-	0	0	-	-	0	0	-	-	13	52	-	-	12	48	0	0	0	0	0	0	0	1						
OVAM	0	0	0	0	0	0	1	50	5	100	1	50	0	0	0	0	0	0	0	0	0	0	0	0						
VLM	0	0	2	10	8	61.54	12	60	0	0	0	0	5	38.46	6	30	0	0	0	0	0	0	0	7						
VMM - Water Reporting Division			0	0			0	0			0	0			0	0			0	0			0	0						
MOW																														
Provincial supervisors	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0						
Municipal supervisors	36	27.48	29	14.50	71	54.20	152	76	1	0.76	9	4.5	23	17.56	10	5	14	77	17	57	4	7	7	7						
Local police supervisors	5	13.51	164	79.23	1	2.70	21	10.14	8	21.62	9	4.35	23	62.16	0	0	0	3	4	7	7	7	7	7						

Table 33 Types of administrative measures imposed in 2011 and 2012

Administrative measures can take the form of:

- ▶ a prohibition order: an order to the suspected offender to end activities, works, or the use of objects;
- ▶ a regularisation order: an order to the suspected offender to take measures to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
- ▶ administrative enforcement: an actual action of the persons, mentioned in Article 16.4.6 of the Environmental Enforcement Act, at the expense of the suspected offender, to end the environmental infringement or environmental offence, partly or entirely reverse its consequences, or prevent its repetition;
- ▶ a combination of these different types of administrative measures.

The table above shows that the majority of the total of 624 administrative measures imposed in 2012 were regularisation orders, namely 49.20% of the total of imposed administrative measures. In 2011 too, this was the most used type of administrative measure. More than 44% of the administrative measures imposed in 2011 were regularisation orders.

In 2012, a total of 211 prohibition orders were imposed, which is more than 33% of the total number of imposed administrative measures. In comparison with 2011, a strong increase can be observed in the number of imposed prohibition orders. In fact, the Environmental Enforcement Report 2011 shows that in that year a total of 82 prohibition orders were imposed by the supervisory bodies.

One type of administrative measure that was used on a rather limited scale both in 2011 and in 2012 is the administrative enforcement, namely 8 times in 2011 and 9 times in 2012. As a result, this type represents only a small percentage in the total number of imposed administrative measures in 2011 and 2012.

In 2012, fewer combinations of the different types of administrative measures were imposed in absolute figures, as well as percentage wise.

In the analysis of the figures from the above table, it should be stressed, however, that the actors *cannot* always give a clear answer (for instance, AMI: "-"). For instance, the imposition and implementation of administrative measures does not always correspond with the calendar years. An administrative measure often consists of different actions to be taken by the company which cannot or will not all be taken care of at the same time and not all the measures can be inspected directly after expiry of the term. This should be taken into account in the analysis that follows.

When looking at the different supervisory actors, it can be concluded that most regional bodies and municipal supervisors mainly use regularisation orders, whereas local police supervisors primarily apply the prohibition order, namely in almost 80% of the total number of imposed administrative measures.

About 13% of the total number of administrative measures were imposed following a petition. In 2012, only the municipal supervisors, local police supervisors and the Environmental Inspectorate Division im-

posed administrative measures following a petition. The fact that the municipal supervisors imposed no less than 77 of the total of 200 administrative measures imposed by this actor following a petition can be explained by the fact that they are the most local actor. People (cf Article 16.4.18) who want to file a petition can simply contact their local supervisor through the urban or municipal contact points. In the Environmental Enforcement Report 2011 as well it turned out that municipal supervisors imposed the most administrative measures following a petition in comparison with the other supervisory actors, even though this number (14 administrative measures) was substantially lower than in 2012.

The above data show that it was impossible for no less than 81 of the total of 624 imposed administrative measures to have these measures carried out within the imposed term. This comes down to 13%, which is also an increase in this ratio compared to 2011. In 2011, it was indeed not possible to have 7.44% of the total of imposed administrative measures carried out within the imposed term. A prerequisite for the effectiveness of administrative measures is that they are actually implemented within an imposed term. Delaying this measure may result in greater damage and higher risks. In the context of the evaluation of the Environmental Enforcement Act the VHRM recommended in 2012 that the instrument 'administrative enforcement' could provide a solution to exert additional pressure in case administrative measures are not implemented in time.

3.8.2 Appeals against decisions to impose administrative measures

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

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

In 2012, 38 appeals were lodged with the Minister against decisions to impose administrative measures, 17 of which pertained to environmental health and 21 to nature protection. Since a total of 624 administrative measures were imposed in 2012, this means that the rate of appeals for administrative measures amounted to about 6% in 2012. The AMMC is in charge of the preparation of the appeal case, which means that it studies its admissibility, sets up a hearing, if applicable, and formulates an advisory opinion for the Minister. The figures, received through the survey of the AMMC, revealed that 12 appeals were declared inadmissible and 26 admissible.

In 2011, the AMMC received a bit more appeals against decisions to impose administrative measures, namely 44 (34 of which were declared admissible). Since a total of 349 administrative measures were imposed in 2011, the rate of appeals was just above 12% in 2011. It can thus be concluded that the rate of appeals with respect to the imposed administrative measures strongly declined in 2012 (only 6%).

The Minister has to take a decision within a period of 90 days from the receipt of the appeal. On condi-

on that this is notified to the suspected offender, as well as the person who imposed the administrative measure, the Minister may extend this period once by 90 days.

Since the administrative measures expire if no decision is reached in time, it is important for the Minister to reach a decision within the term laid down by Flemish Parliament Act. The table below gives an overview of the decisions of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2011 and 2012.

	2011	2012
Decision of the Minister within the term laid down by Flemish Parliament Act	34	26
Number of appeals that were declared well-founded	4	4
Number of appeals that were declared partially well-founded	5	4
Number of appeals that were declared unfounded	19	18
Number of appeals that were declared devoid of purpose	6	0
Total number of admissible appeals	34	26

Table 34 Comparison of the decision of the Minister with regard to the appeals against decisions to impose administrative measures that were declared admissible in 2011 and 2012

The above table shows that in 2012, just like in 2011, a decision about the admissible appeals was always reached within the term laid down by Flemish Parliament Act.³⁹ The majority, namely almost 70%, was declared unfounded in 2012, whereas 15% was declared partially well-founded and 15% completely founded in 2012.

The table below shows the percentage of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, both for 2011 and 2012.

Type of the imposed administrative measures	% of appeals against decisions to impose administrative measures in comparison to the number of imposed administrative measures	
	2011	2012
Prohibition order	6.09%	20.83%
Regularisation order	19.48%	3.26%
Administrative enforcement	25.00%	3.13%
A combination of the aforementioned administrative measures	4.12%	24.02%

Table 35 Percentage share of appeals against decisions to impose administrative measures in comparison to the total number of administrative measures imposed, by type, in 2011 and 2012

³⁹ The difference between an inadmissible appeal and an appeal that is declared devoid of purpose can be illustrated with a few examples. An inadmissible appeal does not meet the eligibility criteria for the appeal. For instance: the appeal periods were not respected or no copy of the contested decision was added to the appeal dossier. Appeals that are declared devoid of purpose are for instance the appeals in which the administrative measure was lifted by the supervisor him or herself after all the conditions included in the decision to impose administrative measures were met by the offender. The appeal is declared devoid of purpose because the offender complies with the rules, but only after the appeal was declared admissible.

The above table shows that no clear line can be drawn in the form of administrative measures which the suspected offender appeals against. In 2011, this was the case in one-fourth of the cases against administrative measures in the form of administrative enforcement, whereas in 2012, in almost one-fourth of the appeals an appeal was lodged against combinations of administrative measures and against prohibition orders.

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

Article 16.4.18, §4 of the Environmental Enforcement Act stipulates that an appeal can be lodged with the Minister against the refusal to impose an administrative measure. The Minister will reach a relevant decision within a term of sixty days following receipt of the appeal. The Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy advises the Minister in these appeals.

The table below gives an overview of the number of appeals lodged against refused petitions to impose administrative measures.

	2011	2012
Number of appeals that were declared well-founded	1	0
Number of appeals that were declared partially well-founded	3	1
Number of appeals that were declared unfounded	6	3
Number of appeals that were declared inadmissible	1	2
Appeals for which no decision was taken within the period of 60 days laid down by Flemish Parliament Act	0	0
Appeals against refused petitions for the imposition of administrative measures	11	6
Total	22	12

Table 36 Number of appeals lodged against refused petitions for the imposition of administrative measures

The table above shows that, in 2012, 6 appeals were lodged against refused petitions for the imposition of administrative measures. This is a decrease compared to 2011 when 11 such appeals were lodged.

Two of the six appeals lodged against refused petitions to impose administrative measures were declared inadmissible and half of them were declared unfounded. Only one appeal was declared partially well-founded in 2011.

Just like in 2011, all decisions were reached within the term of sixty days laid down by Flemish Parliament Act in 2012.

3.9 Evaluation of the instrument ‘safety measure’

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

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

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


Contrary to the supervision and the enforcement instruments discussed in this chapter the use of safety measures completely falls outside the enforcement process. Safety measures are indeed not aimed at preventing or reversing the consequences of environmental infringements or environmental offences. They are only imposed when there may be serious danger to people or the environment. Consequently, safety measures are a totally separate category within the Environmental Enforcement Act. Therefore, they are neither an administrative measure, nor an administrative fine, nor a criminal penalty. Although these are restrictive measures, they do not presuppose any error by the person they are aimed at, and neither are they intended to penalise. What prevails in a safety measure is the general interest, including the protection of public health, order, peace and quiet, and safety.⁴⁰ Because safety measures can be imposed by supervisors, amongst others, as described in the Environmental Enforcement Act, they are still included as instruments in this chapter. However, the idea is not to compare the number of imposed safety measures to the total number of implemented environmental enforcement inspections, as was the case for the other instruments. It will only be examined how many and which safety measures were taken by which actors.

The table below gives an overview of the number and type of imposed safety measures, broken down by environmental enforcement actor, in 2012. By way of comparison, the total number of safety measures in 2011 was also included. The supervisory bodies were also asked to indicate the number of safety measures which could not be implemented within the imposed term. The result is presented in the table below.

⁴⁰ Explanatory Memorandum; parliamentary proceedings, Session 2006-2007, 13 June 2007, Document 1249 (2006-2007) - No. 1, pages 12 and 15.

	The suspension or execution of works, actions, or activities	The prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon	The complete or partial closure of a plant	The seizure, storage or removal of relevant objects, including waste and animals	No entry to or leaving of certain areas, grounds, buildings, or roads	Total		It was not possible to have the measure carried out within the imposed term
						2011	2012	
ALBON	0	0	0	0	0	0	0	0
AMI	0	0	0	0	0	1	0	0
AMV	0	0	0	0	0	0	0	0
ANB	1	0	0	0	1	1	2	0
AWZ	0	0	0	0	0	0	0	0
AWV	0	0	0	0	0	-	-	0
AZG	0	0	0	0	0	5	0	0
nv De Scheepvaart	0	0	0	12	0	-	12	4
OVAM	0	0	0	0	0	1	0	0
VLM	0	0	0	0	0	1	0	0
VMM - Water Reporting Division	0	0	0	0	0		0	0
MOW								
Provincial supervisors	0	0	0	0	0	-	0	0
Municipal supervisors	24	2	6	14	0	32	46	5
Local police supervisors	9	0	5	4	0	15	18	0
Total	34	2	11	30	1	56	78	9

Table 37 Nature of the imposed safety measures



In 2012, a total of 78 safety measures were imposed. This is an increase compared to the 56 safety measures that were imposed in 2011.

Just like in 2011, the majority of safety measures (more than 55% of the total number of imposed safety measures) were imposed by municipal supervisors in 2012. In 2012, local police supervisors imposed 18 safety measures. Only two regional supervisory bodies imposed safety measures in 2012, namely nv De Scheepvaart and the Agency for Nature and Forests.

In 34 of the total of 78 imposed measures the safety measure was a 'suspension or execution of works, actions, or activities'. In 38.46% the safety measure pertained to 'the seizure, storage or removal of relevant objects, including waste and animals', and in 14.10% to 'the complete or partial closure of a plant'.

The safety measure 'the prohibition of the use or the sealing of buildings, installations, machines, equipment, means of transport, containers, premises, and everything therein or thereon' was imposed only twice by municipal supervisors. 'No entry to or leaving of certain areas, grounds, buildings, or roads' was imposed once as safety measure by the Agency for Nature and Forests.

The above data show that, in 2012, 11.53% of the total number of imposed safety measures were not carried out within the imposed term. This is a slight increase compared to 2011 when this number amounted to 8.92%.

**Evaluation of the Flemish
Environmental Sanctions
Policy in 2012**

FLORA, NATURE & FORESTS

Chestnut shell.

Photo © Brouwers Erwin/LNE



4. Evaluation of the Flemish Environmental Sanctions Policy in 2012




With the addition of Title XVI ‘Supervision, Enforcement and Safety Measures’ to the Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy a framework was created within which, in addition to criminal sanctions, administrative sanctions can also be applied in the form of alternative and exclusive administrative fines, whether or not with a deprivation of benefits⁴¹. To this end, a distinction was made between environmental offences and environmental infringements. The latter are non-serious breaches of administrative obligations, which do not involve any danger to people or the environment, and which are listed exhaustively by the Government of Flanders in the annexes to the implementing order of the Environmental Enforcement Act⁴². No criminal sanctions can be applied in relation to such environmental infringements under DABM, but exclusive administrative fines can be imposed by a new regional body that was created for this purpose, namely the Environmental Enforcement, Environmental Damage and Crisis Management Division (afdeling Milieuhandhaving, Milieuschade en Crisisbeheer or AMMC) of the Department of Environment, Nature and Energy. Alternative administrative fines, on the other hand, can only be imposed for environmental offences. In principle, such offences can be prosecuted, but when the public prosecutor decides not to do so and notifies the AMMC of this in due time, the environmental offence can be penalised by the AMMC with an alternative administrative fine. The decision whether or not to prosecute a case is reached on the basis of the Classification Document (‘Sorteernota’). This document of the public prosecutor aims to determine which cases will be processed by the public prosecutor’s offices themselves and which cases will be referred to the AMMC, so that each official report is processed in an appropriate manner. This is determined on the basis of a number of technical/legal, legal/economic, criminological and practical considerations.⁴³

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

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

42 In the future the criterion ‘administrative obligation’ will no longer apply in view of the further decriminalisation of certain breaches of environmental law (adaptation of the Environmental Enforcement Act in 2013).

43 This Classification Document is available at: <http://www.vhrm.be/documenten/milieuhandhavingsprogramma/mhp2010-bijlage-3.pdf>



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

If the public prosecutor has informed the AMMC in due time of his or her decision not to prosecute the environmental offence, the AMMC must start the procedure for a possible imposition of an alternative administrative fine. After receiving this decision, the AMMC must inform the suspected offender within a period of 30 days of its intention to impose an alternative fine (possibly with a deprivation of benefits). The AMMC then has 180 days to decide whether an alternative administrative fine (possibly accompanied by a deprivation of benefits) will be imposed. Within ten days the suspected offender must be informed of this decision.

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

In 2012, the administrative transaction was introduced by the Flemish Parliament Act of 20 April 2012 containing various provisions regarding environment and nature ⁴⁴, of which the procedure entered into effect on 23 August 2012. The terms of the administrative transaction were laid down by decree of 6 July 2012.⁴⁵ Before the procedure for the imposition of an alternative or exclusive administrative fine is started the AMMC can make a proposal for the payment of a fine for "more straightforward" environmental offences or infringements that have a limited impact on the environment. However, to this end the breaches must unmistakably be the fault of the offender. If the offender does not pay this type of 'amicable settlement' in time, the regular procedure for the imposition of fines is resumed. This new instrument is oriented towards small environmental and nuisance breaches that have a limited impact on the environment, but which have a disturbing effect on society. For an environmental offence the administrative transaction cannot exceed 2,000 euros, for an environmental infringement this is maximum 500 euros. The administrative transaction is a new and recently introduced instrument. The first experiences with the administrative transaction will be discussed in this section in the context of the evaluation of the sanctions policy pursued by the Environmental Enforcement, Environmental Damage and Crisis Management Division.

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

44 Publication Belgian Official Journal 22 May 2012.

45 Flemish Government Decree of 6 July 2012, Belgian Official Journal 13 August 2012.

Hence, in this section, in which an evaluation will be made of the Flemish sanctions policy in 2012, we will not only look at the activities of the public prosecutor's offices, but also at those of the AMMC, the Environmental Enforcement Court and the Flemish Land Agency.

By combining the figures from the Environmental Enforcement Report 2011 with the data provided in the survey for the present environmental enforcement report, it is possible to already identify a number of trends in the implementation of the Environmental Enforcement Act.

4.1 Evaluation of the criminal sanctions policy

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

In the present environmental enforcement report it is therefore important to evaluate the criminal sanctions policy pursued in 2012. That is why the Flemish High Council of Environmental Enforcement addressed the Board of Procurators General, asking, among other things, about the number of cases submitted to the public prosecutor's offices in the Flemish Region, and what treatment those cases received.

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

The figures come from a central database (REA/TPI system) of the statistical analysts connected to the general prosecutor's offices and the Board of Procurators General, which is based only on registrations by the criminal divisions of the public prosecutor's offices of the courts of first instance, and does not contain any data on the number of environmental cases processed by the general prosecutor's offices or the cases related to environmental matters processed by police prosecutors.⁴⁶

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

The Flemish High Council of Environmental Enforcement asked whether it was possible to only reflect cases that had occurred in the Flemish Region. The limitation to Flanders was achieved, on the one hand, by counting the cases processed by the Flemish public prosecutor's offices and, on the other hand, by introducing a limitation for the judicial district of Brussels based on a combination of the reporting authority (where official reports drawn up by police departments located in the Brussels Capital Region were not taken into account) and the location where the breach took place (where breaches committed outside the Flemish Region were not taken into account).

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

Simplified official reports⁴⁷ are not included in the database of the public prosecutor's offices. The public prosecutor's offices are only provided with a list of simplified official reports. However, if the official report

⁴⁶ It should be pointed out that a few cases relating to nature protection law fall under the competence of the police prosecutors and the police courts (e.g. official reports drawn up in relation to breaches of forestry legislation or fishing legislation, even if the breaches are considered to be major offences). Hence, these environmental cases are not all included in the figures, as they are not all counted in the REA/TPI figures. In this field the registration within the public prosecutor's offices will be standardised in the future.

⁴⁷ A simplified official report implies that the most important data about certain non-serious breaches are recorded on an electronic medium. The police only carry out summary investigations or requests for information if necessary. In this way, the reception of redundant documents by public prosecutor's offices is reduced.

is requested by the public prosecutor's office after all, the database will take these cases into account. The problem is that these simplified official reports are included in the General National Database (see Chapter 2) and the figures below contain an underestimation of the number of simplified official reports that were effectively drawn up.

Generally speaking, it should be stated that the statistics presented by public prosecutor's offices are not statistics on crime or breaches of the regulations, and should therefore not be interpreted as such.

Just like in the previous chapters, the VHRM will try to make a comparison between 2011 and 2012 on the basis of the data from the Environmental Enforcement Report 2011 and the data received during the survey for the Environmental Enforcement Report 2012.

It should be pointed out that it is still too early to draw conclusions based on the data extracted on 10 January 2012 and 10 January 2013 about the different ways in which the cases registered in 2011 and 2012 were processed. The figures are merely indicative for both years, since the state of progress of these cases can still have changed after the extraction date. Nevertheless, it will be tried to identify some trends.

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

- ▶ Nature protection law:
 - ▶ 63A - Hunting
 - ▶ 63B - Fishing
 - ▶ 63M - Flemish Parliament Act on Forests
 - ▶ 63N - Washington Convention - protected animal species, plants and ivory
 - ▶ 64J - Flemish Parliament Act on nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements
- ▶ Waste⁴⁸ :
 - ▶ 64E - Illegal dumping
 - ▶ 64F - Waste management
 - ▶ 64L - Import and transit of waste (Law of 9 July 1984)
- ▶ Manure:
 - ▶ 63I - Manure

⁴⁸ There are no separate charge codes (number and letter) for breaches relating to the Flemish Parliament Act on Soils, which is why these are classified under the charge code 'waste'.

- ▶ 63O - Flemish Parliament Act on Manure
- ▶ Licence:
 - ▶ 64D - Commodo-Incommodo (Environmental Licence)
 - ▶ 64H - Operation of an unlicensed plant
 - ▶ 64I - Non-compliance with Vlareem legislation
- ▶ Air/water/soil/noise (emissions):
 - ▶ 64A - Air and water pollution
 - ▶ 64B - Carbon oxide (CO)
 - ▶ 64C - Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)
 - ▶ 64G - Illegal water abstraction
 - ▶ 64M - Surface water pollution
 - ▶ 64N - Groundwater pollution

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

First of all, a picture will be given of the total number of cases received by the public prosecutor's offices. This will be done according to the aforementioned charge codes, and, whenever possible, by reporting authority.

Then, we will look at the last state of progress (on 10 January 2013) of the cases which the public prosecutor's offices received in 2012, after which we will discuss the reasons for the dismissal of the cases falling under environmental enforcement in greater detail. Given that the reference date for these data is 10 January 2013, it is important to interpret the state of progress of these cases in their right context. The relevant data and percentages only refer to the situation on 10 January 2013 and do not reflect the final status of a case. Consequently, only trends can be described and no final conclusions can be drawn yet.

Finally, attention can be drawn in this section to the different partnerships between public prosecutor's offices⁴⁹. One of the results is that the majority⁵⁰ of environmental enforcement cases of the public prosecutor's offices in the province of West Flanders are dealt with by the public prosecutor's office of Kortrijk and that in East Flanders the majority of cases are treated by the public prosecutor's office of Ghent⁵¹. In

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

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

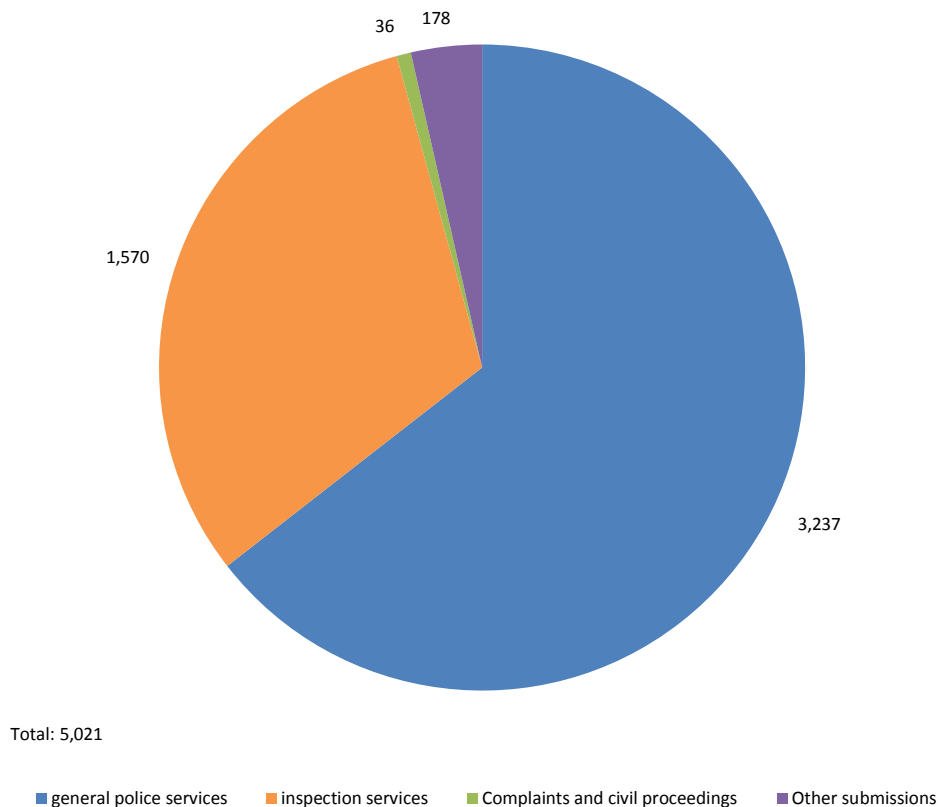
51 The public prosecutor's office of Ghent (partnership between public prosecutor's offices in East Flanders) processes all the environmental prosecution files of the province of East Flanders (with charge codes 63A, 63M, 63N, 63O, 64A, 64D, 64F, 64G, 64H, 64I, 64J, 64L, 64M and 64N), with the exception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

the partnership between the public prosecutor's offices of Mechelen and Turnhout all the environmental enforcement cases of Mechelen are processed by the public prosecutor's office of Turnhout⁵².

However, in the figures and tables below these dossiers are still registered with the respective territorial public prosecutor's offices, depending on where the breach was committed. With the establishment of the partnerships between public prosecutor's offices the Public Prosecutor aims for increased specialisation and uniformity in the processing of environmental offences in the different districts, although local differences are still possible within the partnerships between public prosecutor's offices due to the diverse nature of environmental offences depending on the location of the district (urban areas versus rural areas).

4.1.1 Reception

The graph below shows the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011, per reporting authority, and subdivided into four different categories, namely general police, inspection services, complaints and civil proceedings, and other submissions.⁵³



52 In this case it concerns the environmental enforcement cases with charge codes 63A, 63B, 63M, 63N, 63O, 64A, 64C, 64D, 64E, 64G, 64F, 64H, 64J, 64L, 64M and 64N.

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

Graph 15 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012, per reporting authority

Overall, the public prosecutor's offices received 5,021 environmental cases in 2012, of which 64.47% or 3,237 cases originated from the general police and 31.27% or 1,570 cases from the inspection services. The category 'general police' comprises both local and federal police forces. The inspection services, on the other hand, are administrative services with a limited competence to report breaches, such as the regional environment administrations (supervisors). A small number of the total number of received cases, namely 3.55% or 178 cases, were 'other submissions'. These include submissions from other public prosecutor's offices and courts, from other sections of the same public prosecutor's office, from foreign public prosecutor's offices/courts and from courts belonging to the same judicial district that give rise to the creation of a new case. This category is also a residual category for any cases which do not fall into any of the other three categories. Dossiers received from municipal supervisors and supervisors of intermunicipal associations also come under this category. In addition, 36 cases or 0.72% pertained to complaints and civil proceedings. It concerns complaints from private persons, as well as complaints from bailiffs or from private organisations and civil plaintiffs.

More than half of the dossiers which the public prosecutor's offices received in 2012 were drawn up by the general police. In Chapter 2 it was already indicated that the general police drew up 16,230 official reports with regard to the environment in 2012. Since this number includes the initial as well as the simplified official reports this could explain the difference with the number of dossiers which the public prosecutor's offices received in 2012. It should be remarked that no distinction can be made here between official reports drawn up by the local police with general identification authority on the one hand and official reports drawn up by local police supervisors on the other.

On the basis of the data from the Environmental Enforcement Report 2011 a comparison can be made in the table below between the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region by reporting authority in 2011 and 2012.

Reporting authority	2011	2012
General police services	3,910	3,237
Inspection services	1,853	1,570
Complaints and civil proceedings	67	36
Other submissions	172	178
Total	6,002	5,021

Table 38 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region per reporting authority in 2011 and 2012

The above table shows a considerable decrease in the number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in 2012. With respect to the total number of dossiers in 2011, a 16% decrease can be observed. This decrease can be recorded in the

number of dossiers submitted by the general police services as well as by the administrative inspection services. The number of complaints and civil proceedings declined as well in 2012 compared to 2011.

One possible explanation for the decrease in the number of official reports that were drawn up by the police services and referred to the public prosecutor's office is the fact that cases of 'nuisance' are now more than ever dealt with by the system of municipal administrative sanctions (gemeentelijke administratieve sancties or GAS)⁵⁴. Before that, official reports were drawn up with regard to environmental breaches.

In 2003, a technical working group was set up within the Committee on Prosecution Policy⁵⁵, with the aim of improving insight into cases submitted to the public prosecutor's offices by the environment services of the Flemish Region. The only code that was available then at the level of the environment services of the Flemish Region was M2. However, it was decided to use, from 1 January 2005 onwards, specific codes within the reference numbers provided to the public prosecutor's offices by the environment services. Initially, the following codes were created:

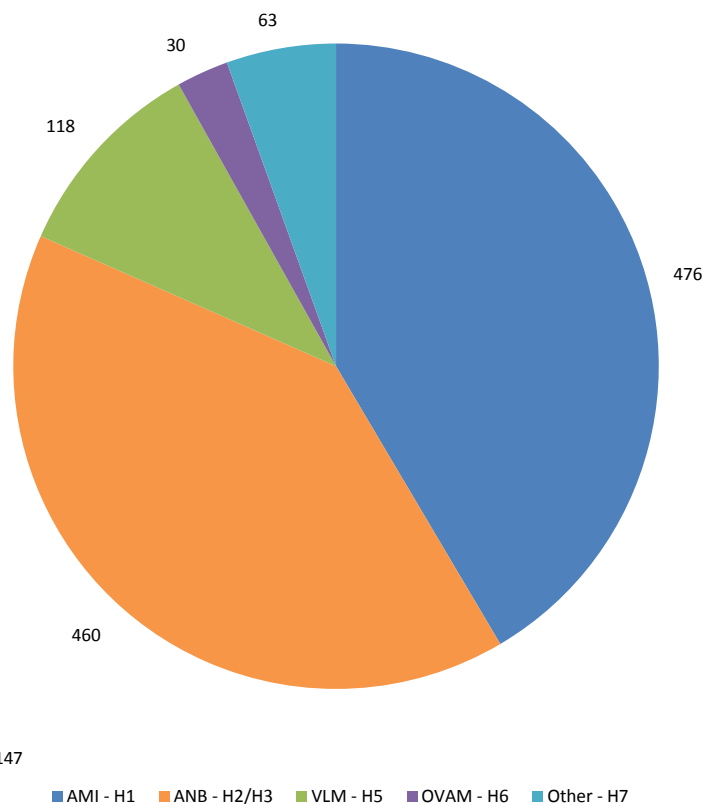
- ▶ H1 : Environmental Inspectorate Division
- ▶ H2 : Forests & Green Areas
- ▶ H3 : Nature
- ▶ H4 : Water
- ▶ H5 : Manure Bank
- ▶ H6 : OVAM
- ▶ H7 : Other⁵⁶

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

54 Act of 13 May 1999 introducing municipal administrative sanctions. This Act was amended on 30 May 2013 and caused a great deal of controversy in the media because the age limit was lowered and the maximum fine was increased.

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

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



Graph 16 *Number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012*

In 2012, a total of 1,147 cases were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region which originated from the Flemish inspection services that used the above codes. The majority of these cases, that is 41.50%, come from the Environmental Inspectorate Division. ANB⁵⁷ too represents a substantial share of the total number of cases from the Flemish inspection services, namely 40.10%. OVAM and VLM account respectively for a share of 2.62% and 10.29%.

In comparison to the chapter 'Evaluation of the instrument 'official report'' a few differences can be observed between the number of indicated official reports drawn up by the enforcement actors and the number of reports received by the criminal divisions of the public prosecutor's offices in the Flemish Region. The Agency for Nature and Forests, for instance, indicated that, in 2012, 583 initial official reports were drawn up, although the public prosecutor's offices only received 460 in 2012. This can be explained by the fact that this agency also draws up official reports that are dealt with by police prosecutors. A higher number of drawn up official reports (respectively 136 and 36) was also given by VLM and OVAM than was received by the public prosecutor's offices (respectively 118 and 30) in 2012. These figures are probably an underestimation, as not all Flemish environment administrations seem to be familiar with the possibility

⁵⁷ Currently, 'Forests & Green Areas' and 'Nature' together form the Agency for Nature and Forests (Agentschap voor Natuur en Bos or ANB). This is reflected accordingly in the above graph, where ANB combines the cases falling under H2 and H3. Since 2008, ANB has only used the code H2.

of using a specific code. As a result, the process by which some cases were included in the figures above cannot be identified. The VHRM again recommends that the different environment administrations make consistent use of these codes. Another cause of the possible underestimation of the number of official reports from inspection services in the registration of the public prosecutor's offices is the fact that follow-up official reports drawn up by inspection services are not recorded separately in the REA/TPI system and can therefore not be traced. Sometimes, such follow-up official reports are drawn up by the inspection services at the request of the Public Prosecutor. This may concern one or more follow-up official reports.

The reverse is sometimes observed too. The Environmental Inspectorate Division indicated having drawn up 451 official reports, whereas the public prosecutor's offices received more in 2012, namely 476.

For the cases relating to water the separate code H4 was provided. Since no cases with code H4 were recorded in 2012 by the criminal divisions of the public prosecutor's offices in the Flemish Region, this code does not feature in the above graph. The Flemish Environment Agency, however, communicated that one official report was drawn up in 2012. This could be explained by the fact that the code H4 was not used.

On the basis of the data from the Environmental Enforcement Report 2011 the table below makes a comparison of the number of environmental enforcement cases originating from the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011 and in 2012.

	2011	2012
AMI - H1	555	476
ANB - H2/H3	569	460
VLM - H5	173	118
OVAM - H6	35	30
Other - H7	47	63
Total	1,379	1,147

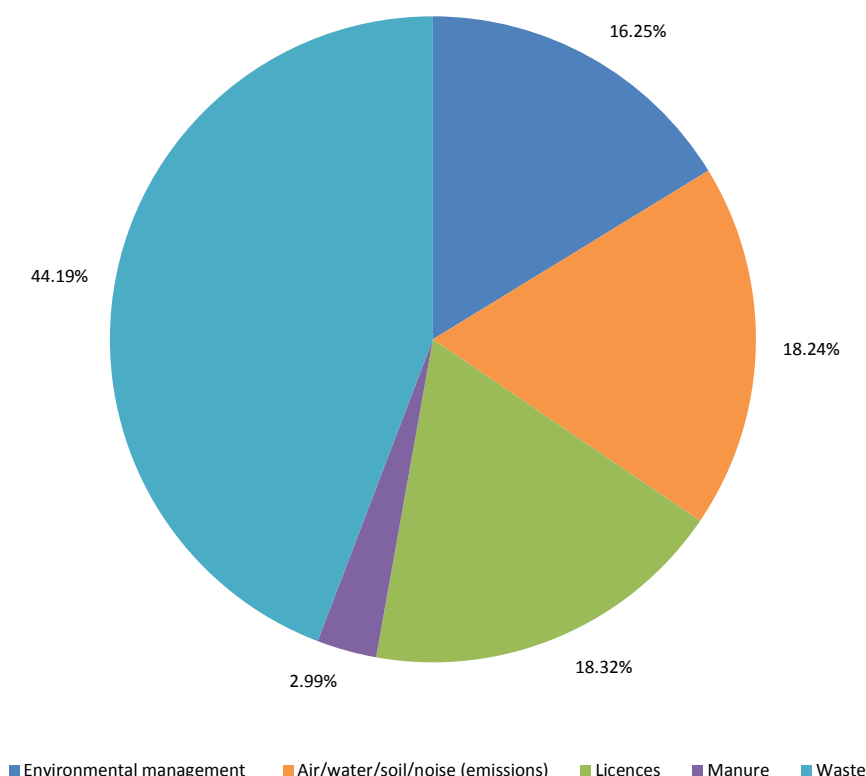
Table 39 Number of environmental enforcement cases submitted by the Flemish environment services as recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011 and 2012

In 2012, the public prosecutor's offices generally received fewer dossiers from the different Flemish environment services than in 2011. A decrease of around 16% can be observed in the number of cases originating from the Flemish environment services, which corresponds to the aforementioned general decrease in the number of cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012 compared to 2011. Only in the category 'Other' - for instance, nv De Scheepvaart or the Agency for Roads and Traffic - a slight increase can be observed in the number of environmental enforcement cases that were recorded in 2012 by the criminal divisions of the public prosecutor's offices in the Flemish Region in comparison to 2011.

Earlier we have already provided an overview of the different charge codes that are used to record environmental enforcement cases. This allows us for 2012 as well to present an overview in the graphs and

tables below of the share of each charge code in the total number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012.

The graph below illustrates the percentages of cases recorded with the charge codes under the headings of waste, manure, licences, air/water/soil/noise (emissions) and nature protection, compared to the total number of cases recorded with one of these charge codes in 2012.



Graph 17 Percentage share of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge, for cases in 2012

More than 44% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region had a main charge code within the theme of waste. It concerned 2,219 dossiers. Cases regarding licences and emissions each represented about 18% of the total number of cases in 2012, or respectively 920 and 916 cases. In addition, 816 cases pertained to nature protection law and 150 cases to manure.

The table below not only makes a further subdivision of the main charge codes of 'nature protection law', 'emissions', licences', 'manure' and 'waste', but also compares between 2011 and 2012 on the basis of the data from the Environmental Enforcement Report 2011.

		2011	2012
Nature protection law	63A - Hunting	202	137
	63B - Fishing	189	114
	63M - Flemish Parliament Act on Forests	132	122
	63N - Washington Convention - protected animal species, plants and ivory	176	169
	64J - Nature conservation and the natural environment, including the prohibition of and the licence obligation for the modification of vegetations and small landscape elements	313	274
	Total nature protection law	1,012	816
Air/water/soil/noise (emissions)	64A - Air and water pollution	282	198
	64B - Carbon oxide (CO)	11	12
	64C - Noise nuisance, decibels in urban environment (Royal Decree of 24 February 1977)	620	479
	64G - Illegal water abstraction	1	2
	64M - Surface water pollution	216	164
	64N - Groundwater pollution	58	61
	Total air/water/soil/noise	1,188	916
Licences	64D - Commodo-Incommodo	147	25
	64H - Operation of an unlicensed plant	146	278
	64I - Non-compliance with Vlareem legislation	594	617
	Total licences	887	920
Manure	63I - Manure	60	44
	63O - Flemish Parliament Act on Manure	185	106
	Total manure	245	150
Waste	64E - Illegal dumping	1,921	1,677
	64F - Waste management	608	483
	64L - Importation and transit of waste	141	59
	Total waste	2,670	2,219
Total	6.002	5.021	

Table 40 Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge code, for cases in 2011 and 2012

To clarify the above data it should be mentioned that code 63N (Washington Convention - protected animal species, plants and ivory) does strictly speaking not come entirely under nature protection, since nature protection law is defined in the Environmental Enforcement Decree as the whole set of legal rules that are oriented towards the management of nature and the environment on the one hand, and nature conservation and the promotion of biological and landscape diversity, on the other, more specifically the regulations specified in Article 16.1.1, first sub-paragraph, 2°, 3°, 4°, 7°, 14°, 15° and 16°, of the Environmental Enforcement Act. Since this prevention code refers to all so-called CITES dossiers, a (limited) number of dossiers will also be included here which do not fall within the scope of DABM. The import, export

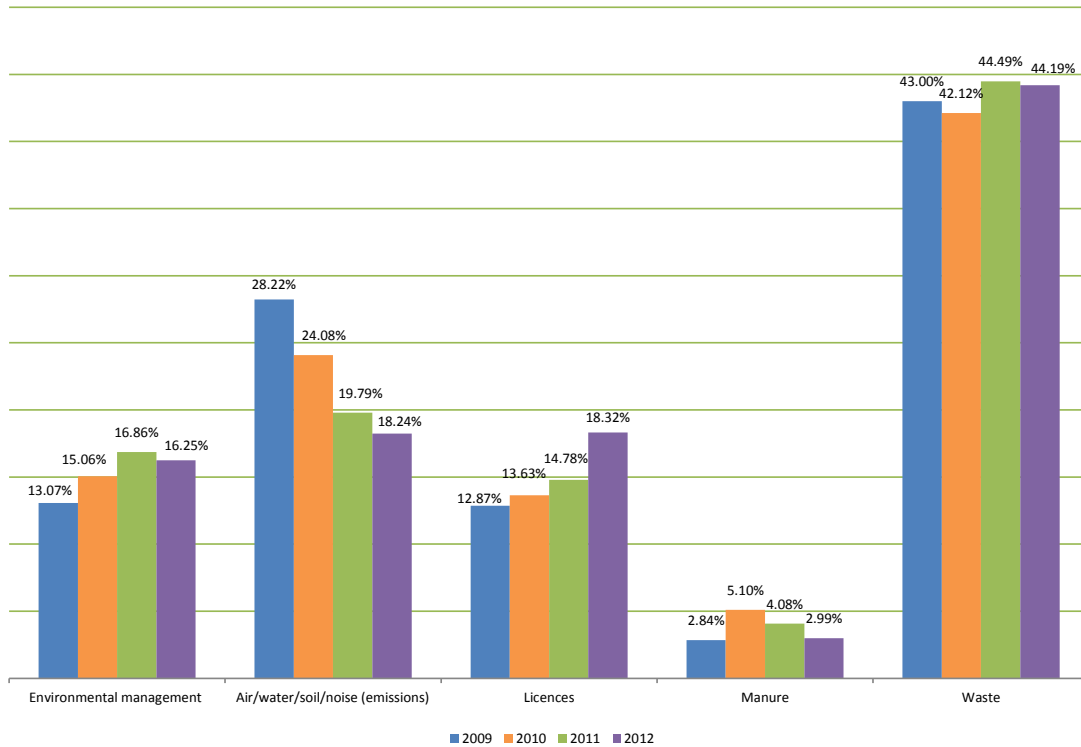
and transit of CITES specimens is in fact a federal competence in accordance with Article 6 §1 III 2° of the Special Act of 8 August 1980 on institutional reform.

As indicated earlier, the majority of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region also referred to waste in 2012, namely 44.19%. The above table shows that within the theme of waste most cases were recorded with charge code 64E. These 1,677 cases all pertained to illegal dumping. These dossiers regarding illegal dumping not only constitute the largest share within the theme 'waste', but also within the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in 2012. No less than 33% of all the cases pertained to illegal dumping in 2012. This trend could also be observed in the Environmental Enforcement Report 2011.

The decrease in the total number of environmental enforcement cases in 2012 compared to 2011 can be observed for various themes. An increase can only be recorded for cases with the theme 'licence'. This increase can mainly be reported for the number of cases with charge code 64H 'Operation of an unlicensed plant'. In chapter 2 it was indicated by the municipal supervisors that on the territory of the Flemish Region more than 3,000 nuisance-causing plants requiring a licence operate without a licence. If an official report is drawn up for these environmental offences, it can be expected that the use of this charge code will even increase in the future.

Both in 2011 and in 2012 the cases with charge codes 63I 'manure' and 63O 'Flemish Parliament Act on Manure' constituted only a small part of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, namely respectively 4.08% and 2.99%. This could be explained by the fact that since 2006 (see below) the Flemish Land Agency can to some extent issue its own administrative fines under the Flemish Parliament Act on Manure.

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



Graph 18 Comparison of number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region, per main charge codes, in 2009, 2010, 2011 and 2012

The graph above shows that more than 40% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region pertain to waste. This can be regarded as a constant fact. A trend that can be graphically presented is the decrease in the percentage share of cases regarding air/water/soil/noise and the growing percentage share of cases relating to licences.

4.1.2 State of progress

Besides the figures regarding the amount of environmental enforcement cases received, we were also able to obtain information for the Environmental Enforcement Report 2012 on the state of progress of the environmental enforcement cases for the study period. However, it must be noted that the data extraction took place on 10 January 2013. As a result, no final conclusions can be drawn about the processing of the cases. Nevertheless, we will try to describe some trends.

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

PRELIMINARY INVESTIGATION

Cases which were still in the stage of preliminary investigation on 10 January 2013.

WITHOUT FURTHER ACTION / DISMISSAL

In cases where no further action is taken or the case is dismissed, this means that, for the time being, there will be no further prosecution of the case, and that the preliminary investigation has been concluded. The decision to take no further action is in principle always temporary. As long as the limitation period has not expired, the case can be reopened. However, it should be remarked that, statistically speaking, this category also contains the cases in which the public prosecutor decided to refer the cases to the AMMC in view of the imposition of an alternative administrative fine. As a result of this decision the limitation period expires and makes the decision final.⁵⁸

CASE REFERRED

This category comprises cases which on 10 January 2013 had been referred to another public prosecutor's office or other (legal) institutions. As long as these referred cases are not returned to the public prosecutor's office of origin, they remain in this state of progress. In other words, for this public prosecutor's office they can be considered closed. They are reopened with a different reference number by the public prosecutor's office of destination.

AMICABLE SETTLEMENT

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

MEDIATION IN CRIMINAL CASES

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

INVESTIGATION

The category 'investigation' contains cases which have been placed under judicial investigation and which have not yet been heard in chambers with a view to the determination of the court proceedings.

⁵⁸ Currently, it is examined within the expertise network of the public prosecutor whether there is a possibility to place the cases referred to the general entity under a different heading (expiry of limitation period).

CHAMBERS

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

WRIT OF SUMMONS & FURTHER PROCEEDINGS

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

The table below provides a picture of the last state of progress d.d. 10 January 2013 for the environmental enforcement cases recorded with the criminal divisions of the public prosecutor's offices of the Flemish Region in 2012. Both the total number of cases in Flanders and the number of cases per public prosecutor's office are given. In addition, the percentage share of the different states of progress with respect to the total number of environmental enforcement cases is given, both for 2011 and 2012, in order to make a comparison possible.

	Preliminary investigation			Without further action			Case referral			Amicable settlement			Mediation in criminal cases			Investigation			Chambers			Writ of summons and further proceedings			Unknown/error		TOTAL							
	2011		2012		2011		2012		2011		2012		2011		2012		2011		2012		2011		2012		2011	2012								
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%								
ANTWERP	122	24.65	144	33.64	271	54.75	183	42.76	26	5.25	11	2.57	59	11.92	74	17.29	0	0	0	0	0	0	0	17	3.43	16	3.74	/	/	495	428			
MECHELEN	93	37.2	60	31.25	141	56.4	116	60.42	10	4	3	1.56	2	0.8	9	4.69	0	0	0	0	0	0	0	3	1.2	1	0.52	/	/	250	192			
TURNHOUT	147	32.52	146	39.95	275	60.84	201	54.18	5	1.11	4	1.08	14	3.1	9	2.43	0	0	0	0	0	0	0	10	2.21	9	2.43	/	/	452	371			
HASSELT	49	14.63	28	10	229	68.36	168	60	8	2.39	17	6.07	39	11.64	42	15	0	0	0	0	0	0	0	10	2.99	25	8.93	/	/	335	280			
TONGEREN	120	27.46	75	21.07	226	51.72	216	60.67	54	12.36	30	8.43	25	5.72	13	3.65	0	0	1	0.28	3	0.69	0	0	9	2.06	21	5.9	/	/	437	356		
BRUSSELS	236	56.46	70	18.57	168	40.19	273	72.41	11	2.63	30	7.96	1	0.24	0	0	0	0	0	0	1	0.24	2	0.53	1	0.24	2	0.53	/	/	418	377		
LEUVEN	91	25	52	17.75	173	47.53	164	55.97	21	5.77	28	9.56	68	18.68	35	11.95	0	0	0	0	0	0	0	10	2.75	10	3.41	/	/	364	293			
GHEENT	200	20.41	161	21.27	662	64.55	529	69.88	57	5.82	18	2.38	15	1.53	1	0.13	0	0	0	0	17	1.73	8	1.06	1	0.13	28	2.86	39	5.15	/	/	980	757
DENDERMONDE	106	14.44	135	22.84	557	75.89	398	67.34	43	5.86	34	5.75	0	0	3	0.51	1	0.14	0	0	12	1.63	1	0.17	0	0	15	2.04	20	3.38	/	/	734	591
OUDENAARDE	91	36.69	88	32.59	119	47.98	138	51.11	5	2.02	5	1.85	29	11.69	30	11.11	0	0	0	0	0	0	0	4	1.61	9	3.33	/	/	248	270			
BRUGES	189	35.53	94	21.91	296	55.64	269	62.7	7	1.32	16	3.73	9	1.69	17	3.96	0	0	0	0	2	0.38	0	0	28	5.26	31	7.23	/	/	532	429		
KORTRIJK	150	31.06	91	22.98	270	55.9	227	57.32	20	4.14	21	5.3	13	2.69	19	4.8	0	0	0	0	0	0	1	0.25	0	0	30	6.21	37	9.34	/	/	486	396
IEPER	57	34.55	34	21.25	99	60	108	67.5	4	2.42	4	2.5	4	2.42	8	5	0	0	0	0	0	0	0	1	0.61	6	3.75	/	/	165	160			
VEURNE	36	33.03	37	30.58	46	42.2	58	47.93	14	12.84	12	8.81	9	8.26	4	3.31	0	0	0	0	0	0	0	4	3.67	10	8.26	/	/	109	121			
FLANDERS	1,687	28.11	1,215	24.2	3,532	58.85	3,048	60.71	285	4.25	233	4.64	287	4.78	264	5.26	1	0.02	1	0.02	35	0.58	20	0.4	5	0.08	1	0.02	236	4.7	3	0.06	6,002	5,021

Table 41

Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2011, possibly through addition to a mother case, including the state of progress on 10 January 2013 per category of charge and per judicial district, and comparison with 2012

The table above shows that about one-fourth of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were still in the stage of preliminary investigation on 10 January 2013. In comparison to 2011, this is a small percentage decrease. On the other hand, a small increase can be observed in the percentage share of the number of cases that were already dismissed without further action on the date of extraction. In the next section 'Reasons for dismissal' the reasons for taking no further action will be discussed in greater detail.

Just like in 2011, almost 5% of the number of cases were referred in 2012 as at 10 January 2013. These are cases that were referred to another public prosecutor's office or another (judicial) body.

With regard to the number of amicable settlements a small percentage increase can be observed compared to 2011, although this number varies in both years around 5% of the total number of environmental enforcement cases. In absolute figures, however, a decrease can be observed in the number of cases in which an amicable settlement was proposed as at 10 January 2013. Naturally, this can be explained by the fact that the total number of environmental enforcement cases that were recorded by the criminal divisions of the prosecutor's offices decreased by 16%, namely from 6,002 cases in 2011 to 5,021 cases in 2012.

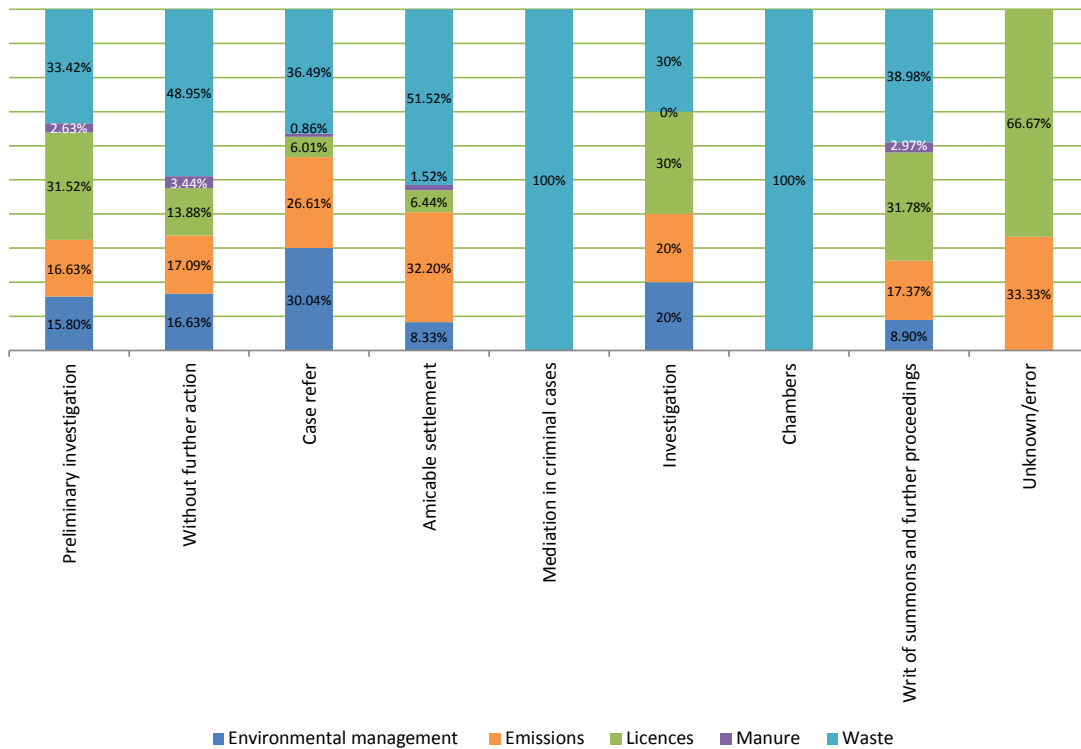
Both in real figures and in terms of percentage share compared to the total number of cases, an increase can be recorded in the cases for which a writ of summons was already issued as at 10 January 2013. On 10 January 2012, it concerned 170 cases, or 2.83% of the total number of environmental enforcement cases. On 10 January 2013, however, this already amounted to 236 cases, or 4.70% of the total number of environmental enforcement cases.

In 2012, an average of 358.64 environmental enforcement cases were recorded per public prosecutor's office. In 2011, this average was higher, namely 429 environmental cases per public prosecutor's office, since the total number of recorded cases was higher. What is similar to 2011, however, is the fact that these numbers differ greatly between public prosecutor's offices. In 2011, the public prosecutor's office of Ghent recorded 980 and in 2012 757 environmental enforcement cases, whereas the public prosecutor's offices of Veurne and Ieper, for instance, recorded respectively only 109 and 165 environmental enforcement cases in 2011, and only 121 and 160 in 2012. This can simply be explained by the fact that these are smaller judicial districts/judicial areas.

The graph below reflects, per state of progress, the share of the different categories of charge codes (waste, manure, licences, emissions and nature protection). The cases relating to waste, manure, licences, emissions and nature protection were compared to a reference value equal to 100 for each state of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons & further proceedings, unknown/error).

It is not remarkable that the majority of cases in the different states of progress - preliminary investigation, without further action, referral, amicable settlement, mediation, investigation, Chambers and writ of summons - pertain to waste, since the majority of the recorded environmental enforcement cases have to do with waste.

In the states of progress 'preliminary investigation', 'investigation' and 'writ of summons' the cases regarding licences constitute a large share as well, apart from waste. In absolute figures this concerned respectively 383,6 and 75 cases.



Graph 19 State of progress as at 10 January 2013 for environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012 according to the share of the charge category (waste, manure, licences, emissions and nature protection)


The theme 'manure' has only a small percentage share in each state of progress. This is not surprising since only 150 cases regarding manure were recorded in 2012 by the criminal divisions of public prosecutor's offices in the Flemish Region.

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

The table below gives a comparison in terms of percentage between the data from 2011 and 2012 per charge code and per state of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons and further proceedings, unknown/error) which the cases in the charge codes were in on respectively 10 January 2012 and 10 January 2013. The states of progress (preliminary investigation, without further action, case referred, amicable settlement, mediation in criminal cases, investigation, chambers, writ of summons and further proceedings, unknown/error) were compared to a reference value equal to 100, i.e. a specific category of charge code (waste, manure, licences, emissions and nature protection).

	Waste		Manure		Licences		Emissions		Nature protection	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
Preliminary investigation	13.84%	18.30%	20.00%	21.33%	46.67%	41.63%	28.28%	22.05%	33.70%	23.53%
Without further action	72.81%	67.24%	68.98%	70.00%	45.21%	45.98%	53.54%	56.66%	52.57%	62.13%
Case refer	4.99%	3.83%	5.31%	1.33%	1.13%	1.52%	6.23%	6.77%	6.42%	8.58%
Amicable settlement	5.26%	6.13%	2.04%	2.67%	3.16%	1.85%	6.82%	9.28%	4.25%	2.70%
Mediation in criminal cases	0.04%	0.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Investigation	0.73%	0.27%	0.00%	0.00%	0.23%	0.65%	0.84%	0.44%	0.49%	0.50%
Chambers	0.04%	0.04%	0.41%	0.00%	0.00%	0.00%	0.17%	0.00%	0.10%	0.00%
Writ of summons and further proceedings	2.27%	4.15%	3.27%	4.67%	3.61%	8.15%	4.12%	4.48%	2.47%	2.57%
Unknown/error	0.00%	0.00%	0.00%	0.00%	0.00%	0.22%	0.00%	0.11%	0.00%	0.00%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Table 42 Categories of charge codes (waste, manure, licences, emissions and nature protection) of the environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region: comparison of the percentage share in 2010 and 2011 according to the state of progress as at 10 January 2012 and 10 January 2013 respectively, per category of charges



The above table shows that in 2012 a writ of summons was already issued for 4.15% of the total number of cases regarding waste as at 10 January 2013. This is an increase compared to 2011. The percentage share of amicable settlements in cases regarding waste rose compared to 2011. In 2012, fewer cases pertaining to waste remained without further action in terms of percentage.

With regard to the cases regarding manure it can be concluded that in 2012, just like in 2011, the majority, namely 70%, remained without further action and 21.33% was still in the stage of preliminary investigation as at 10 January 2013. A writ of summons was only issued for 7 cases. An amicable settlement was proposed in 4 cases and two cases were referred on the date of extraction. This trend is similar to that of 2011.

For the cases regarding licences the 2012 data are not all that different from those of the Environmental Enforcement Report 2011. Still, an increase can be recorded in the percentage share of cases for which a writ of summons was already issued as at 10 January 2013.

For the cases regarding emissions an amicable settlement was already proposed for almost 10% on the date of extraction. This is not just an increase compared to 2011, but it also shows that - in comparison with cases regarding waste, licences, nature protection and manure - an amicable settlement was proposed percentage wise for a large share of the cases pertaining to air/water/soil/noise. It concerns 85 cases in absolute figures. In addition, more than half of the cases pertaining to emissions remained without further action and for almost 5% a writ of summons was already issued on the date of extraction.

With regard to cases concerning nature protection it can be concluded that more than 60% (or 507 cases) remained without further action as at 10 January 2013. An increase of almost 10 percentage points can be observed with regard to 2011 in this state of progress.

NOTE:

In the analysis above all environmental enforcement cases for which no further action was taken by the public prosecutor's offices in the Flemish Region were added up. It was indeed mentioned that 60.71% of the environmental enforcement cases remained without further action or were dismissed by the public prosecutor's offices in the Flemish Region, or 3,048 cases. Still, this figure needs to be put into perspective. We should take account of the fact that a large number of cases received by the public prosecutor's offices can, in fact, not be prosecuted. 'Referred' cases and 'technical dismissals' should therefore be left out of consideration. In other words, more measures are taken in environmental cases than the figures above suggest. This is because only the 'prosecutable cases' should be taken into account. For environmental enforcement cases recorded by the public prosecutor's offices in 2012 this would amount to 3,628 prosecutable cases, instead of 5,021. In this way, the results of the calculations would be that in fact an amicable settlement was already proposed in 7.27% of the recorded cases instead of 5.26% as stated above, and that a writ of summons was issued in 6.50% of the cases instead of 4.70%. This is an increase compared to the percentages obtained through this method of calculation in the Environmental Enforcement Report 2011. In fact, as at 10 January 2012 an amicable settlement was already reached in 6.38% of all the environmental enforcement cases and a writ of summons was already issued in 3.78% of the cases.

4.1.3 Reasons for dismissal

In the section above referring to the state of progress of environmental enforcement cases it was found that, as at 10 January 2013, 60.71% of the cases had already been dismissed without further action by the public prosecutor's offices in the Flemish Region. However, for the drafting of the present environmental enforcement report the Flemish High Council of Environmental Enforcement was also provided with figures that further clarify these cases that were dismissed without further action.

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


For the figures at hand the following classification was used:

Dismissal based on the principle of opportunity:

- ▶ limited consequences for society
- ▶ situation regularised
- ▶ relational offence
- ▶ limited detriment
- ▶ reasonable term exceeded
- ▶ lack of precedent
- ▶ chance events with cause
- ▶ young age
- ▶ disproportion criminal proceedings - social disruption
- ▶ victim's attitude
- ▶ compensation to the victim
- ▶ insufficient investigation capacity
- ▶ other priorities.

Technical dismissal:

- ▶ no offence
- ▶ insufficient proof

- 
- ▶ limitation
 - ▶ death of the offender
 - ▶ withdrawal of the complaint (in case of offences requiring a complaint)
 - ▶ amnesty
 - ▶ incompetence
 - ▶ final judgement
 - ▶ immunity
 - ▶ absolution due to extenuating circumstances
 - ▶ absence of complaint
 - ▶ offender(s) unknown.

Dismissal for other reasons:

- ▶ administrative fine
- ▶ Praetorian probation
- ▶ signalling of the offender.

Unknown/error: cases for which the reason for the absence of further action could not be determined.

The table below illustrates the types of 'without further action' (dismissal based on the principle of opportunity, technical dismissal and other reason for dismissal) reported by the different public prosecutor's offices in the Flemish Region, compared to all the environmental enforcement cases which were in the 'without further action' state of progress on 10 January 2013.

		Dismissal of cases based on the principle of opportunity		Technical dismissals		Dismissals for other reasons		Total	
		n	%	n	%	n	%	n	%
ANTWERP	Antwerp	63	34.43	70	38.25	50	27.32	183	100.00
	Mechelen	23	19.83	54	46.55	39	33.62	116	100.00
	Turnhout	33	16.42	79	39.30	89	44.28	201	100.00
	Hasselt	57	33.93	60	35.71	51	30.36	168	100.00
	Tongeren	69	31.94	89	41.20	58	26.85	216	100.00
	Total	245	27.71	352	39.82	287	32.47	884	100.00
BRUSSELS	Brussels	60	21.98	103	37.73	110	40.29	273	100.00
	Leuven	22	13.41	56	34.15	86	52.44	164	100.00
	Total	82	18.76	159	36.38	196	44.85	437	100.00
GHENT	Ghent	50	9.45	192	36.29	287	54.25	529	100.00
	Dendermonde	36	9.05	105	26.38	257	64.57	398	100.00
	Oudenaarde	13	9.42	56	40.58	69	50.00	138	100.00
	Bruges	10	3.72	107	39.78	152	56.51	269	100.00
	Kortrijk	1	0.44	118	51.98	108	47.58	227	100.00
	Ieper	10	9.26	45	41.67	53	49.07	108	100.00
	Veurne	8	13.79	26	44.83	24	41.38	58	100.00
	Total	128	7.41	649	37.58	950	55.01	1,727	100.00
Total		455	14.93	1,160	38.06	1,433	47.01	3,048	100.00


Table 43 Per public prosecutor's office, number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012 and share of dismissals for opportunity-based reasons, technical dismissals and dismissals for other reasons (state of progress as at 10 January 2013)

The above table shows that 3,048 of the total of 5,021 environmental enforcement cases which the public prosecutor's offices received were already dismissed as at 10 January 2013. This is 60.71% of the total number of environmental enforcement cases.

Of these 3,048 cases almost 15% were dismissed for opportunity-based reasons, more than 38% for technical reasons, and more than 47% for 'other reasons', namely the 'administrative fine', the 'Praetorian probation' and the 'signalling of the offender'.

In the previous environmental enforcement report it was indicated that in 2011 a total of 58.84% of the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were dismissed as at 10 January 2012. The majority, namely 44.65% of the dismissed cases remained without further action for 'other reasons'. In addition, 34.46% of the dismissed cases remained without further action because of technical reasons and 20.89% for opportunity-based reasons.

In comparison with the figures from the Environmental Enforcement Report 2011 a percentage increase can generally be observed in the share of dismissed cases, but a decrease in the percentage share of dismissals for opportunity-based reasons and an increase in the percentage share of dismissals for other




reasons and dismissals for technical reasons.

When looking at the different public prosecutor's offices separately, it can be concluded that with the public prosecutor's offices of Antwerp, Tongeren and Hasselt more than 30% of the dismissed environmental enforcement cases that were recorded here in 2012 were dismissed for opportunity-based reasons. On the other hand, it can also be concluded that the public prosecutor's offices of Leuven, Ghent, Dendermonde and Bruges dismissed more than half of the dismissed environmental enforcement cases for 'other reasons'. In the following table these other reasons for dismissal will be discussed in greater detail. One of these reasons is indeed that the public prosecutor's office refers the case to the Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy in view of the imposition of an administrative fine. Therefore, the table below gives the reasons for dismissal per item of charge code (waste, manure, licences, emissions and nature protection) for 2012. This allows us to get an idea of which types of cases are dismissed for which reasons, and how the Environmental Enforcement Act influences this.

	Nature protection		Air/water/soil/ noise (emissions)		Licences		Manure		Waste		Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Technical dismissals	213	42,01	221	42,42	93	21,99	5	4,76	628	42,09	1.160	38,06
No offence	24	4,73	52	9,98	21	4,96	2	1,90	62	4,16	161	5,28
Insufficient proof	64	12,62	94	18,04	53	12,53	2	1,90	389	26,07	602	19,75
Dropping of criminal proceedings	2	0,39	9	1,73	4	0,27	15	0,49
Inadmissibility of criminal proceedings	17	3,35	10	1,92	9	2,13	.	.	2	0,13	38	1,25
Offender(s) unknown	106	20,91	56	10,75	10	2,36	1	0,95	171	11,46	344	11,29
Dismissal of cases based on the principle of opportunity	93	18,34	87	16,70	56	13,24	3	2,86	216	14,48	455	14,93
Reasons that are inherent in the nature of the breaches	37	7,30	34	6,53	40	9,46	2	1,90	93	6,23	206	6,76
Reasons that are inherent in the offender's person	41	8,09	47	9,02	13	3,07	1	0,95	96	6,43	198	6,50
Policy	15	2,96	6	1,15	3	0,71	.	.	27	1,81	51	1,67
Dismissals for other reasons	201	39,64	213	40,88	274	64,78	97	92,38	648	43,43	1.433	47,01
Signalling of the offender	2	0,39	1	0,19	2	0,47	.	.	31	2,08	36	1,18
Praetorian probation	3	0,59	2	0,38	4	0,95	.	.	4	0,27	13	0,43
Administrative fine	196	38,66	210	40,31	268	63,36	97	92,38	613	41,09	1.384	45,41
Total	507	100,00	521	100,00	423	100,00	105	100,00	1.492	100,00	3.048	100,00

Table 44 Per charge code, environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012 and share of dismissals for opportunity-based reasons, technical dismissals and dismissals for other reasons (state of progress as at 10 January 2013)



As indicated earlier, 60.70% of the total number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region were dismissed in 2012.

It can be concluded from the above table that 1,160 cases were dismissed for technical reasons. More than half of these 1,160 cases were dismissed because there was insufficient evidence, almost 30% because the offenders were unknown and almost 14% because no offence had taken place.

Within the framework of the opportunity-based reasons for dismissal several reasons can be put forward. The reasons that are inherent in the nature of the breaches can for instance be the limited consequences for society, but also the fact that the situation was regularised, the detriment was too small or the reasonable term was exceeded. In 2012, a total of 206 cases were dismissed for reasons that are inherent in the nature of the breaches, of which 155 cases were dismissed because the situation was regularised (within the short term). In addition, 198 cases were dismissed for reasons inherent in the offender's person. This may relate, among other things, to the absence of the previous reasons, chance events with cause in specific circumstances, the offender's young age, or the fact that there is a disproportion between the criminal proceedings and the social disruption, the victim's attitude or the compensation to the victim. At the same time 51 cases were dismissed as at 10 January 2013 for opportunity-based reasons related to policy. This may have to do with the limited criminal investigation capacity or the fact that other priorities were set by the public prosecutor's office. In total, 455 or 14.9% of the total number of environmental enforcement cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012 were dismissed for opportunity-based reasons.

As indicated earlier, the dismissal for other reasons may relate to the referral of a case to the Environmental Enforcement, Environmental Damage and Crisis Management Division for the imposition of an administrative fine, to the Praetorian probation or to the signalling of the offender. The above table shows that as at 10 January 2013 no less than 1,433 cases were already dismissed for other reasons of dismissal without further action. What is interesting in this framework is that no less than 1,384 cases were dismissed in 2012 in view of the imposition of an administrative fine. This means that no less than 27.56% of the total number of environmental enforcement cases recorded by the public prosecutor's offices in 2012 were dismissed in view of the imposition of an administrative fine. In 2011, this ratio amounted to 25.59%, in 2010 to 15.31% and in 2009 to 10.13%. In real figures, however, this is a decrease in the number of cases compared to 2011. In that year no less than 1,536 environmental enforcement cases were dismissed in view of the imposition of an administrative fine. This can be explained by the decrease in the number of cases that were recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012 compared to 2011.

When looking at the different themes it can be concluded that 507 cases regarding nature protection law were dismissed. The majority, almost 40% or 196 cases, were dismissed in view of the imposition of an administrative fine. In addition, almost 21% were dismissed for technical reasons, namely the fact that the offenders were unknown. As for the dossiers regarding emissions it can also be concluded that about 40% of the total of 521 dismissed cases were dismissed in view of the imposition of an administrative fine. Also, 18% were dismissed because insufficient evidence was available. In total, 423 of the 920 cases regarding licences were dismissed. For dismissals in licencing dossiers it was decided in most cases to refer the offence to the AMMC in view of the imposition of an administrative fine. In fact, more than 63% of these 423 dismissed cases were dismissed in view of the imposition of an administrative fine. More than 90% of

the dismissed cases regarding manure were dismissed for that reason. With regard to the theme of waste 613 or 40% of the cases were dismissed for that reason. Also, one-fourth of the dismissed cases regarding waste were dismissed because insufficient evidence was available.

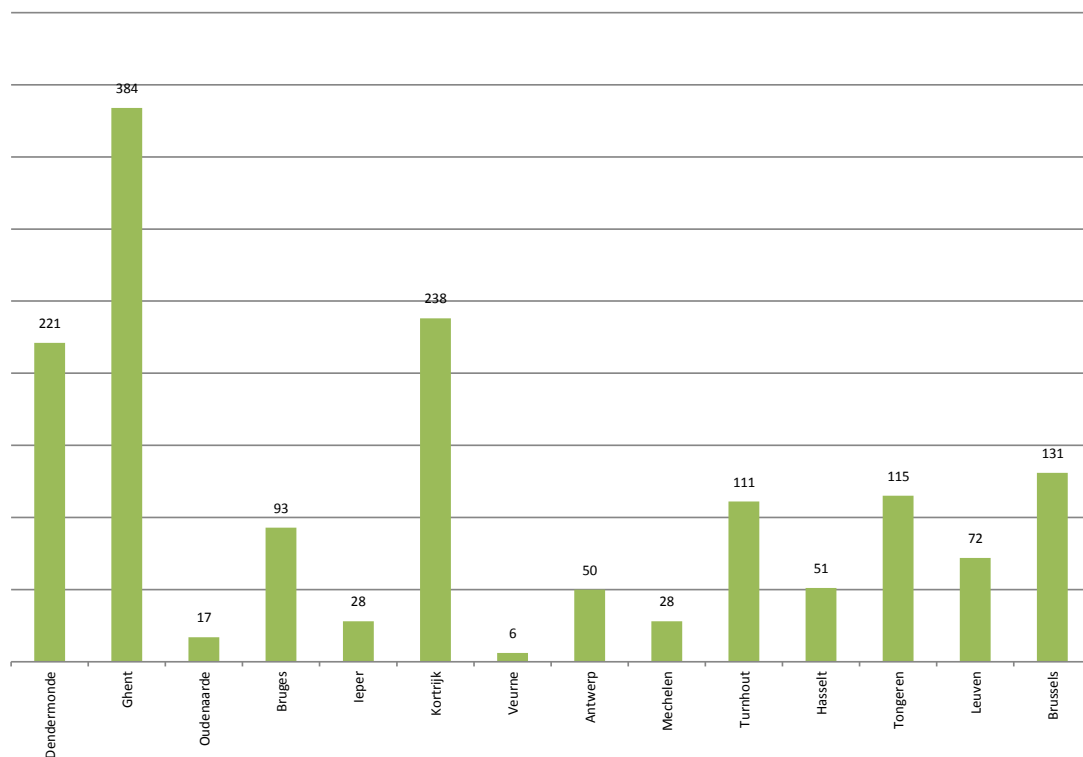
Chapter 4.2 gives an evaluation of the administrative sanctions policy and indicates, among other things, how the Environmental Enforcement, Environmental Damage and Crisis Management Division handles the cases referred to this Division of the LNE Department by the public prosecutor's offices.

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

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

4.2.1 Processing of environmental offences

In the framework of the processing of environmental offences by the AMMC in 2012 it was asked how many official reports the AMMC received from each of the public prosecutor's offices between 1 January 2012 and 31 December 2012. This is reflected in the graph below.



Graph 20 Official reports received by the AMMC of the Department of Environment, Nature and Energy from public prosecutor's offices in the Flemish Region in 2012

It can be deduced from the above graph that in 2012 the AMMC received a total of 1,545 official reports from the criminal divisions of the public prosecutor's offices in the Flemish Region in view of the imposition of an alternative administrative fine in 2012⁵⁹.

Despite the fact that each public prosecutor's office in the Flemish Region uses the possibility of referring cases to the AMMC in view of the imposition of an alternative administrative fine, strong regional differences can be observed in the number of referred cases. Apart from the size of the public prosecutor's office this has to do with the fact that it continues to be the authority of the public prosecutor to decide whether or not to refer cases to the AMMC.

The table below not only gives the number of cases the AMMC received from the public prosecutor's offices in 2012, but also the number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices in the Flemish Region in 2012. This allows us to calculate the percentage of cases which each of the public prosecutor's offices refers to the AMMC. In this context it should be noted that not all the official reports that were recorded in 2012 by the public prosecutor's offices were actually processed in 2012. In fact, the public prosecutor's offices have a period of 180 days (can be extended once by 180 days) to refer the case to the AMMC. On the basis of the Environmental Enforcement Report 2011, the figures relating to 2011 are also reflected in the table below.

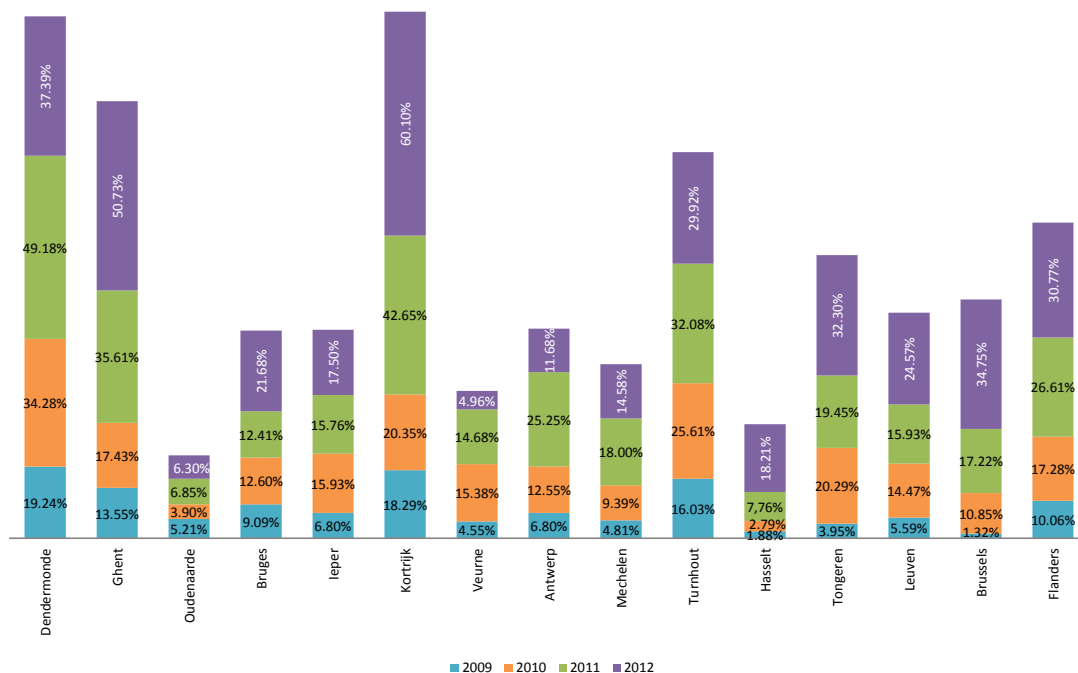
⁵⁹ This concerns the number of official reports the AMMC received in 2012. It should be taken into account that some of these official reports were drawn up in 2011, and possibly also in 2010, but which the public prosecutor decided in 2012 to refer to the AMMC in view of the imposition of an administrative fine.

	Official reports received by the AMMC from the public prosecutor's offices		Number of environmental enforcement cases recorded by the criminal divisions of the public prosecutor's offices		Percentage share of official reports referred to the AMMC	
	2011	2012	2011	2012	2011	2012
Dendermonde	361	221	734	591	49.18%	37.39%
Ghent	349	384	980	757	35.61%	50.73%
Oudenaarde	17	17	248	270	6.85%	6.30%
Bruges	66	93	532	429	12.41%	21.68%
Ieper	26	28	165	160	15.76%	17.5%
Kortrijk	206	238	483	396	42.65%	60.10%
Veurne	16	6	109	121	14.68%	4.96%
Antwerp	125	50	495	428	25.25%	11.68%
Mechelen	45	28	250	192	18.00%	14.58%
Turnhout	145	111	452	371	32.08%	29.92%
Hasselt	26	51	335	280	7.76%	18.21%
Tongeren	85	115	437	356	19.45%	32.30%
Leuven	58	72	364	293	15.93%	24.54%
Brussels	72	131	418	377	17.22%	34.75%
Total	1,597	1,545	6,002	5,021	26.61%	30.77%

Table 45 Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2011 and 2012 and referred to the AMMC

It can be deduced from the above table that in absolute figures fewer cases were referred to the AMMC, even though this only has to do with the fact that the public prosecutor's offices recorded fewer environmental enforcement cases in 2012 than in 2011. In fact, the percentage share of the number of cases that are referred to the AMMC increased by more than four percentage points. In 2012, the AMMC received more than 30% of the cases regarding environment from the public prosecutor's offices in view of the imposition of an alternative administrative fine. It should be remarked, however, that there is (some) noise in the figures to be compared (see below). For this reason the analysis of this section will be mainly based on the figures which the Flemish High Council of Environmental Enforcement received from the AMMC. This does not alter the fact that the above 30.77% is an increase compared to the 26.61% from the Environmental Enforcement Report 2011 and definitely with respect to the 17.28% from the Environmental Enforcement Report 2010. The previous section already drew attention to the positive evolution in the dismissal of environmental enforcement cases by public prosecutor's offices in view of the imposition of an alternative administrative fine. The aforementioned data confirm this positive trend and point to an improved implementation of the Environmental Enforcement Act.

Since this is the fourth environmental enforcement report of the Flemish High Council of Environmental Enforcement it is in any case possible to make a further evaluation of the impact of the Environmental Enforcement Act with regard to the referral of cases by public prosecutor's offices to the AMMC in view of the imposition of an administrative fine for 2009, 2010, 2011 and 2012. This is reflected in the graph below.



Graph 21 Percentage share of cases received by the public prosecutor's offices in the Flemish Region and referred to the AMMC in 2009, 2010, 2011 and 2012

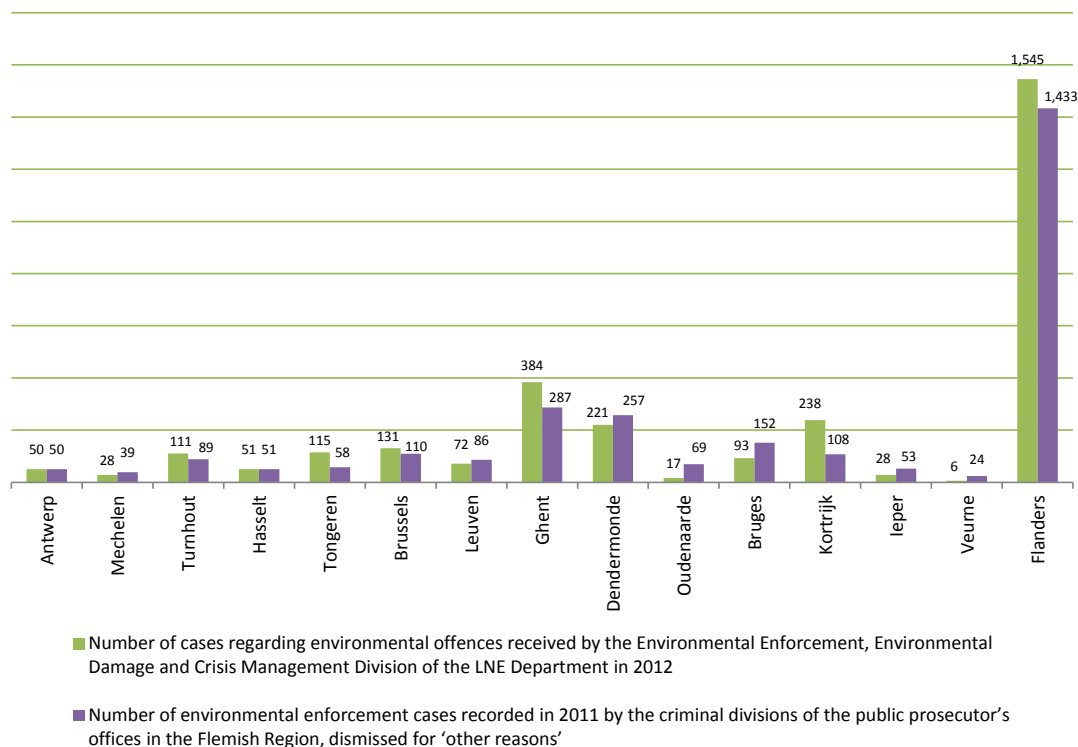
In total, the percentage share of official reports referred to the AMMC since the coming into effect of the Environmental Enforcement Act in 2009 has already increased by more than 20 percentage points and almost one-third of the environmental enforcement cases recorded by public prosecutor's offices are referred to the AMMC. It is very apparent from the above graph, however, that large regional differences exist. In addition, it can be concluded that the number of referred official reports is growing with some public prosecutor's offices. This growing trend shows that the public prosecutor's offices are gradually making more use of the possibilities offered by the Environmental Enforcement Act. This implies that the public prosecutor's offices can spend more time on the more serious environmental offences, whereas the other offences can still be processed in an appropriate manner through the imposition of an administrative fine. It is striking, however, that - despite the overall increase in the percentage of referred cases - the percentage share of cases that is referred to the AMMC in view of the imposition of an alternative administrative fine is declining for the public prosecutor's offices of Dendermonde, Oudenaarde, Veurne, Antwerp, Mechelen and Turnhout⁶⁰.

NOTE

The figures above referring to the number of cases submitted by the public prosecutor's offices and received by AMMC are based on the figures which the Flemish High Council of Environmental Enforcement

⁶⁰ It cannot be concluded from this that the partnerships between public prosecutor's offices have an impact on this decrease nor can any other conclusions be made here. It is very likely that the differences between the different districts are coincidental. In terms of percentage, there is a great difference, but in absolute figures it only concerns about 15 cases.

received from the AMMC. When we compare these figures to the cases recorded in 2012 that were dismissed by the public prosecutor's offices - on the basis of the figures which the VHRM received from the public prosecutor's offices - for 'other reasons' (including the referral in view of the imposition of an administrative fine, in addition to the Praetorian probation and the signalling of the offender), a certain discrepancy may be observed. This is reflected in the following graph.



Graph 22 *Number of environmental enforcement cases dismissed for 'other reasons' in 2012 by the criminal divisions of the public prosecutor's offices in the Flemish Region, compared to the number of cases relating to environmental offences received by the AMMC in 2012*

The above graph shows that the AMMC received 112 more cases than the number that was dismissed by the public prosecutor's offices for 'other reasons'.⁶¹ This can also be observed with the individual public prosecutor's offices of Ghent, Kortrijk, Brussels, Tongeren and Turnhout. In addition, there are also public prosecutor's offices who were reported to have dismissed more cases for 'other reasons', such as Mechelen, Leuven, Dendermonde, Oudenaarde, Bruges, Ieper and Veurne. In this context it should be mentioned that the figures of the public prosecutor's offices may be an overestimation, since the above data pertain to those cases that were dismissed for 'other reasons'. These 'other reasons' not only include the referral in view of the imposition of an administrative fine, but also those dismissals that are related to the Praetorian probation and the signalling of the offender. Moreover, the referral in view of the imposition of an administrative fine implies that the case was referred to either the AMMC or to the Manure Bank. There

⁶¹ The figures from the public prosecutor's offices only refer to the official reports drawn up in 2012 (reference number/12), whereas the figures from the AMMC refer to the period from 1 through 31 January 2012. Certain cases of 2011 were not referred to the AMMC until 2012 (see also footnote 48).

may thus be slight differences.

Another explanation could be that the figures which the Flemish High Council of Environmental Enforcement received from the public prosecutor's offices refer to the date of the breach or the date of reception by the public prosecutor's office, on the one hand, and the latest state of progress on 10 January 2013, on the other (see above). The figures the VHRM received from the AMMC, however, refer to all the official reports which the AMMC received during the exact period from 1 January 2012 to 31 December 2012. Therefore, there is a real possibility that between 1 and 10 January 2013 other official reports were decided to be referred in view of the imposition of an administrative fine, but that these cases were not (yet) counted by the AMMC as it only received them in 2013.

Although there is a difference between the total numbers – the number of cases received by the AMMC is higher than the number of cases dismissed 'for other reasons' by the public prosecutor's offices – in some cases the figures received from the separate public prosecutor's offices are slightly higher than those provided by the AMMC. This may, in part, be owing to the following reasons:

- ▶ the selection of cases by the public prosecutor's offices was made on the basis of a specific list of charge codes, drawn up in consultation with the VHRM. From the moment a case was assigned one of these codes, this case was included in the count of cases of the public prosecutor's offices. Hence, in theory, there is a possibility that the figures of the public prosecutor's offices comprise cases which had been assigned other charge codes as well. These other charge codes could, in theory, have had a relatively greater weight, leading the case to be referred to another administration.
- ▶ Certain environmental cases that were selected on the basis of the charge codes assigned were processed by means of a municipal administrative sanction or another type of administrative fine.
- ▶ In order to gain a complete picture of the action taken in all cases received by the public prosecutor's office, it was decided, in consultation with the VHRM, that for combined cases the decision taken at the level of the so-called 'mother case' would be looked at. In other words, it is possible that a public prosecutor's office combined two or more cases (because they refer to the same suspect and the same type of offence) and that those different cases were submitted together (but as one single whole with the reference number of the 'mother case'). It is therefore possible that the AMMC may have treated these cases as a single case, whereas they were counted as several cases in the figures of the public prosecutor's offices, given that the decision refers to more than one case (at the level of the public prosecutor's office cases are defined by means of a reference number; each initial official report results in the creation of one reference number).
- ▶ It is possible that errors occurred in the recording of charges at the public prosecutor's office, or that the recording of charges was inaccurate or incomplete, resulting in certain cases not being selected at the level of the public prosecutor's office, whereas they were submitted to the AMMC.

The aforementioned reasons may explain why with some public prosecutor's offices the number of cases that were dismissed for 'other reasons' (including the referred cases in view of the imposition of an administrative fine) is higher than the number of cases actually received by the AMMC.

However, there is no real explanation for the fact that the total number for Flanders and the numbers for the other public prosecutor's offices indicate that the AMMC would have received more cases than the public prosecutor's offices have actually referred (which is even an overestimation in the graph above).

By analogy with the Environmental Enforcement Report 2010 and 2011, more specific data are included with regard to the origin and theme of the cases referred to the AMMC. For instance, the table below gives the number of cases which the AMMC received from the different enforcement bodies, namely the Agency for Roads and Traffic, the federal police, the local police, the municipal supervisors, the Environmental Inspectorate Division, the Agency for Nature and Forests, OVAM, VMM and the Flemish Land Agency. The AMMC also received official reports that were drawn up by provincial supervisors and by Customs and Excise, Public Health and Urban Planning.

Enforcement actor	Official reports which the AMMC received in 2012	
	#	%
AWV	41	2.65%
Federal Police	18	1.17%
Local Police	768	49.71%
Municipal supervisors	75	4.85%
AMI	244	15.79%
ANB	296	19.16%
OVAM	17	1.10%
VLM	73	4.72%
VMM	1	0.06%
Provincial supervisors	7	0.43%
Customs and Excise, Public Health and Urban Planning	5	0.32%
Total	1,545	100%

Table 46 Percentage share of cases received by the public prosecutor's offices in the Flemish Region in 2012, per enforcement actor

Almost half of the official reports which the AMMC received in 2012 were drawn up by the local police. In absolute figures it concerned 768 official reports. In addition, almost 20% were drawn up by the Agency for Nature and Forests and more than 15% by AMI supervisors. These trends already revealed themselves in the Environmental Enforcement Report 2011 where almost 52% of the official reports originated from the local police, 19.16% from the Agency for Nature and Forests and 17.97% from the supervisors of the Environmental Inspectorate Division.

The following table gives an overview of the topics of the cases which the AMMC received in 2012. Here,

the same themes are used as those in the evaluation of the sanctions policy pursued by the public prosecutor's offices.

Environmental themes	Official reports which the AMMC received in 2012	
	#	%
Nature protection	324	20.97%
Air, water, soil, noise (emissions)	239	15.47%
Licences	235	15.21%
Manure	85	5.50%
Waste	662	42.85%
Total	1,545	100%

Table 47 Percentage share of official reports received by the AMMC in 2012, per environmental theme

Just like in 2011, over 42% of the cases referred to waste. The fact that the majority of the official reports were drawn up in the context of waste is not surprising. As indicated in the previous section, no less than 44% of the total number of cases recorded by public prosecutor's offices in 2012 had a waste-related charge code.

In addition, it can be concluded that, just like in 2011, one-fifth of the cases received by the AMMC in 2012 related to nature protection.

The graph below gives an overview of the number and type of decisions taken by the AMMC in 2012 within the framework of the alternative administrative fine. As mentioned earlier, the AMMC has since September 2012 the option to propose an administrative transaction for certain environmental offences. This administrative transaction can be regarded as a form of administrative amicable settlement. As a result, the procedure for the imposition of a fine lapses when the proposed amount is paid. However, when the offender refuses the proposal of an administrative transaction, the AMMC will resume the procedure for the imposition of an alternative administrative fine.

The table below presents the data for 2012 as well as the decisions taken by the AMMC in the framework of the alternative administrative fine since the entry into effect of the Environmental Enforcement Act.

Alternative administrative fine	2009	2010	2011	2012	Total
Official reports received by the AMMC from the public prosecutor's offices	304	1,100	1,597	1,545	4,546
Decisions reached within the framework of the alternative administrative fine	5	219	378	1,442	2,044
No fine was imposed	0	6	40	402	448
A fine was imposed	0	151	279	1,040	1,470
The official report did not fall within the scope of Title XVI of DABM	5	62	59	0	126

Table 48 Decisions taken by the AMMC in the context of alternative administrative fines in 2009, 2010, 2011 and 2012

Administrative transaction	2009	2010	2011	2012	Total
Proposal for payment of a sum of money	/	/	/	82	82

Table 49 Proposal by the AMMC for payment of a sum of money in the framework of an administrative transaction in 2012

For 2012, it can be concluded that the AMMC reached a decision in 1,442 cases. 1,040 alternative administrative fines were imposed. In 402 cases it was decided not to impose a fine.

In 2012, the instrument 'administrative transaction' was used for the first time. 82 times the AMMC made a proposal for payment to the offender⁶².

In general, the AMMC received no less than 4,546 official reports from the public prosecutor's offices since the entry into effect of the Environmental Enforcement Act in May 2009. Between 1 May 2009 and 31 December 2012, the AMMC reached a decision in 44.96% of these 4,546 cases. During this period 1,470 alternative administrative fines were imposed and 82 administrative transactions were proposed. In addition, it was decided not to impose a fine in 448 cases. Also, it was concluded in 126 cases that the official report did not fall within the scope of the Environmental Enforcement Act.

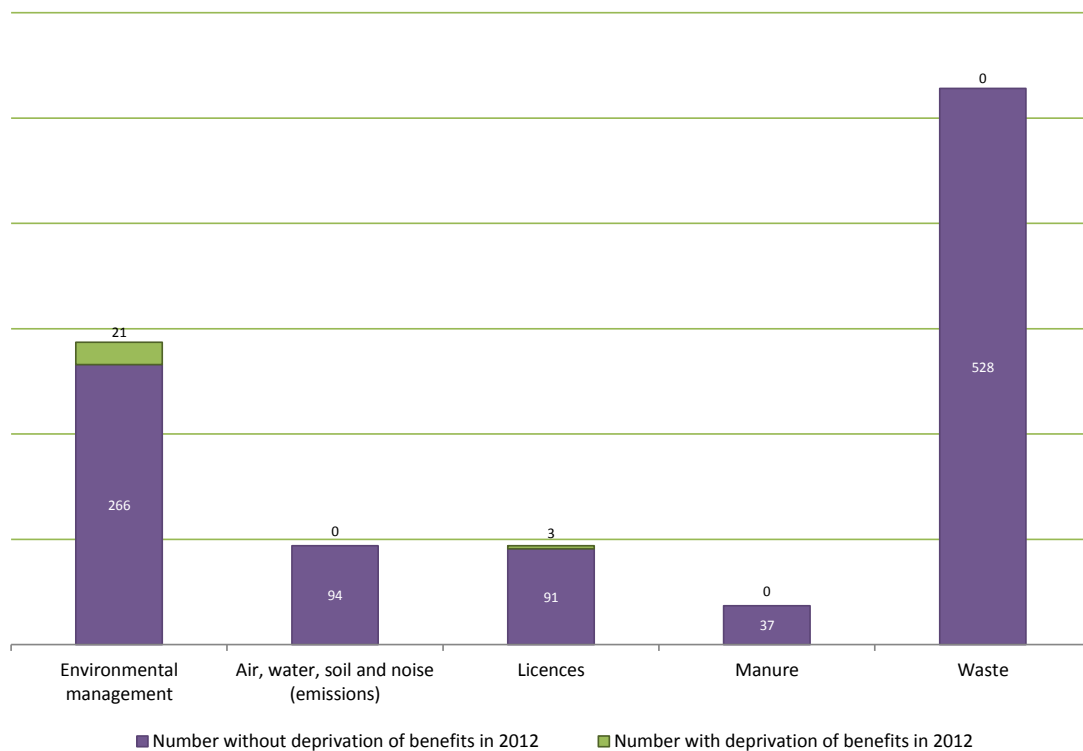
It is apparent from the table that it was decided not to impose a fine in 402 cases. This should be considered in the light of the jurisdiction of the Environmental Enforcement Court regarding the reasonable term⁶³ and the resulting decision of the AMMC not to impose a fine for a number of old cases. These cases

⁶² If the offender does not pay, the AMMC can still reach a 'decision' to impose a fine. The case 'administrative transaction' is thus only completed when the proposal for payment is complied with within the imposed term. As of 2013, it will be possible to explain this in the environmental enforcement report with more figures.

⁶³ A number of judgements of the Environmental Enforcement Court stipulated that, although the exceedance of the decision-making period of 180 days for the AMMC is not explicitly penalised in the Environmental Enforcement Act, the AMMC is bound to reach a decision on the imposition of a fine within a reasonable term. When evaluating the reasonable term, account is taken, among other things, of the extensiveness or complexity of the concrete case. In a number of cases a decision of the AMMC was annulled on the basis of the violation of the reasonable term requirement, in combination with a proven interest of the offender. In accordance with the jurisdiction of the Environmental Enforcement Court a blatant exceedance of the term can decrease the seriousness of the committed offences to such an extent that this should result in a reduced

were carefully selected and the decision was taken on the basis of the actual facts (for instance, the small environmental impact, the restored situation, insufficient proof on the offender).

The graph below presents the framework within which an alternative administrative fine was imposed in 2012, whether or not accompanied by a deprivation of benefits.



Graph 23 Framework within which an alternative administrative fine was imposed by the AMMC, with and without a deprivation of benefits

For more than half of the decisions to impose a fine that were taken in 2012, the official report pertained to waste. About 27% was related to nature protection. Of the 287 decisions to impose a fine that pertained to nature protection, 21 alternative fines were coupled with a deprivation of benefits. 3 of the 94 fines in the context of licences were coupled with a deprivation of benefits.

The graph above also shows that 9.03% of the alternative fines imposed in 2012 pertained to emissions and 3.55% to manure.

As indicated earlier, more than 82 administrative transactions were proposed in the period from September through December 2012. These administrative transactions were proposed for official reports regarding nature protection and waste and concerned respectively 19 and 63 cases.

fine, even if no interest could be demonstrated.

4.2.2 Processing of environmental infringements

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

The AMMC was therefore asked about the number of identification reports it received in 2012, about whether these were drawn up by municipal, provincial, regional or police district supervisors, and about the context in which these identification reports were drawn up and fined.

It was communicated by the AMMC that in 2012 it received a total of 47 identification reports within the framework of identified environmental infringements. These identification reports were all drawn up by regional supervisors, namely four identification reports by supervisors of the Environmental Inspectorate Division, four by supervisors of the Agency for Nature and Forests and 39 by supervisors of the Public Waste Agency of Flanders.

The 47 identification reports which the AMMC received in 2012 represent an increase compared to 2011, when only 18 identification reports were referred to the AMMC, of which 15 were drawn up by regional supervisors, 2 by municipal supervisors and one by a police district supervisor.

The section 'Evaluation of the instrument 'identification report'' reports on the use of this instrument by the supervisors. For this reason the different supervisors were asked how many identification reports they drew up in 2012. These numbers differ greatly from the numbers which the AMMC indicates having received in 2012. The responding municipal supervisors indicated having drawn up a total of 16 identification reports, whereas the AMMC received no identification reports from this actor in 2012. It is possible that a large number of identification reports were not referred to the AMMC and the procedure to be followed should therefore be better communicated. Another plausible explanation is that the supervisors are not entirely familiar yet with the terminology from the Environmental Enforcement Act, as a result of which 'erroneous' data were filled out in the questionnaire. The VHRM is trying to remedy this by means of the environmental enforcement glossary⁶⁴. It can also be concluded that the responding regional supervisors drew up 61 identification reports in 2012, while the AMMC received 47 such reports. OVAM also reported having actually drawn up 39 identification reports. In 2012, the AMMC did indeed receive 39 identification reports from this actor. The number also corresponds for the ANB. The Environmental Inspectorate Division itself reports 3 identification reports, whereas the AMMC received four. NV De Scheepvaart reported having drawn up 15 identification reports, whereas the AMMC received no cases from this actor.

The AMMC was asked to indicate in what framework identification reports were drawn up in 2012. This is reflected in the table below.

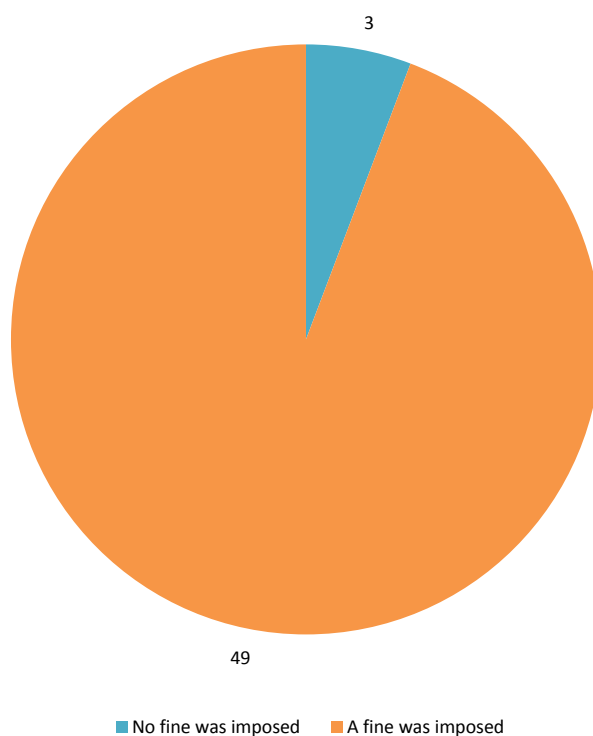
64 <http://www.vhrm.be/voor-de-toezichthouder/glossarium>

Identification reports	Number in 2012
Company-internal environmental care	0
Environmental impact and safety reporting	0
Soil protection and remediation	2
Noise research laboratories	0
Groundwater management laboratories	0
Water analysis laboratories	0
Sectoral provisions on environmental health	4
Waste prevention and management	37
Maintenance and inspection of burners	0
Certification of refrigeration companies	0
Fire protection systems	0
Soil remediation	0
Flemish Parliament Act on Forests	2
Flemish Parliament Act on Hunting	2
Ozone-depleting substances	0
Flemish Parliament Act on Surface Minerals	0
Fluorinated greenhouse gases	0
REACH	0

Table 50 Identification reports received by the AMMC per subject, in 2012

The table above shows that each time 4.25% of the total number of identification reports pertained to soil protection and remediation, the Flemish Parliament Act on Forests and the Flemish Parliament Act on Hunting. In addition, 8.51% referred to sectoral provisions on environmental health. The majority, namely 78.72%, of the total number of identification reports were drawn up in the context of waste prevention and management.

The AMMC was asked to indicate which decisions were taken in 2012 with respect to the received identification reports. The graph below gives an overview of the decisions regarding fines taken in 2012 within the framework of the exclusive administrative fine.



Graph 24 Decisions taken by the AMMC in 2012 in the context of exclusive administrative fines

The above graph shows that in 2012 the AMMC took 52 decisions in the framework of identified environmental infringements. In 94.23% of these decisions an exclusive administrative fine was imposed, whereas in 3 cases it was decided not to impose a fine. Twelve of the imposed fines were coupled with a deprivation of benefits.

On the basis of the data from previous environmental enforcement reports an overview can be given of the decisions taken by the AMMC within the framework of exclusive administrative fines and the identification reports received in 2009, 2010, 2011 and 2012. A more accurate overview can also be provided of how environmental infringements are processed by the AMMC. This comparison is presented in the table below.

Exclusive administrative fine	2009	2010	2011	2012	Total
Identification reports received by the AMMC	18	38	18	47	121
Decisions reached within the framework of the exclusive administrative fine	4	13	36	52	105
No fine was imposed	3	0	2	3	8
A fine was imposed	1	5	32	49	87
The identification report did not fall under the scope of Title XVI of DABM	0	8	2	0	10

Table 51 Decisions taken by the AMMC in the context of exclusive administrative fines in 2009, 2010, 2011 and 2012

Since the entry into effect of the Environmental Enforcement Act in May 2009 until 31 December 2012, the AMMC received a total of 121 identification reports. A decision was already reached within that period for 86.77% of these cases. In 87 cases an exclusive administrative fine was imposed and in 8 cases it was decided not to impose an administrative fine. In addition, it was concluded in 10 cases that the identification report did not fall within the scope of the Environmental Enforcement Act.

The AMMC did not yet make any proposals for the payment of a sum of money to offenders in the context of the administrative transaction as an alternative to the exclusive fine (environmental infringement).

4.3 Evaluation of the administration of justice by the Environmental Enforcement Court

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

The Environmental Enforcement Court was also surveyed by the VHRM about its activities in 2012. It was asked about the number of appeals against decisions of the AMMC it had received in the framework of both environmental offences and environmental infringements in 2012. Another question was how these appeals were processed. The table below shows the activities of the Environmental Enforcement Court in 2012 with regard to the appeals lodged against decisions of the AMMC.

APPEALS	Environmental offence	Environmental infringement	Total
Received in 2012	82	9	91
	(80 registered, 2 not regularised)		
Judgements	Environmental offence	Environmental infringement	Total
Appeal inadmissible (after simplified procedure)	9	2	11
Appeal unfounded, fine confirmed	10	1	11
Appeal unfounded, decision of the AMMC officially annulled	3	0	3
Appeal well-founded or partially well-founded, with reduced fine	18	1	19
Appeal well-founded or partially well-founded, remission of fine	0	0	0
Appeal well-founded or partially well-founded, decision of the AMMC annulled without further action	4	1	5
Agreement to withdraw appeal	4	0	4
Appeal declared devoid of purpose	6	1	7
Interim judgement with regard to barring of late memorandum	2	1	3
Interim judgement with regard to transition from simplified procedure to regular procedure	2	0	2
Interim judgement with regard to reopening of debates	1	0	1
Total	59	7	66

Table 52 Appeals received against decisions of the AMMC in the context of environmental offences and environmental infringements by the Environmental Enforcement Court in 2012 and the results of the processing thereof

In the previous section it was indicated that the AMMC imposed 1,040 alternative administrative fines in 2012. It can be deduced from the above table that the Environmental Enforcement Court received 82 appeals against decisions of the AMMC regarding the imposed alternative administrative fines in 2012. This means that an appeal was lodged against at least 7.88% of the decisions of the AMMC. This percentage

may be higher since the offender has 30 days to lodge an appeal with the Environmental Enforcement Court, starting from the day following notification of the decision of the AMMC. This means that an appeal may still have been lodged against decisions taken by the AMMC during the last thirty days of 2012.

In comparison with 2011 it can be observed that the percentage of appeals against decisions of the AMMC in the context of alternative administrative fines decreased slightly. This ratio was 8.60% in the Environmental Enforcement Report 2011. In the Environmental Enforcement Report 2010 this was 7.28%.

The above table shows, among other things, that the Environmental Enforcement Court actually reached a decision in 2012 for 72% of the appeals it received in 2012. Of the total number of appeals that were lodged against imposed alternative administrative fines, 11% were declared inadmissible, 12% were declared unfounded, which means that the fine imposed by the AMMC was confirmed, and 22% were declared partially or entirely well-founded with a reduced fine as a result.

Within the framework of the exclusive administrative fines imposed by the AMMC in 2012, the above table shows an appeal rate of at least 18.36%. It was indeed indicated in the previous section that in 2012 the AMMC imposed 49 exclusive administrative fines, whereas the Environmental Enforcement Court received 9 appeals in 2012 in the context of exclusive administrative fines. This percentage of the appeal rate may be a bit higher since the offender has a term of 30 days, starting from the day following the notification of the AMMC's decision, to lodge an appeal with the Environmental Enforcement Court. This means that an appeal may still have been lodged against decisions taken by the AMMC during the last thirty days of 2012. The Environmental Enforcement Report 2011 indicates that the Environmental Enforcement Court received 5 appeals in 2011 against AMMC decisions about environmental infringements. In 2011, the AMMC imposed 32 exclusive administrative fines. As a result, the appeal rate was a bit lower in 2011 than in 2012 and amounted to 15.6%.

The above table shows, among other things, that the Environmental Enforcement Court actually reached a decision in 2012 for 78% of the appeals it received against imposed exclusive administrative fines in 2012. Of the total number of appeals that were lodged against imposed exclusive administrative fines, 23% was declared inadmissible, one appeal was declared unfounded, which means that the fine as imposed by the AMMC was confirmed, and one appeal was declared partially or entirely well-founded with a reduced fine as a result.

4.4 Evaluation of the sanctions policy pursued by the Flemish Land Agency

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

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

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

The Flemish Land Agency was therefore not only asked about the number of environmental enforcement inspections carried out in 2012 and the measures taken following these inspections, as described in Chapters 2 and 3, but also about the number of administrative fines imposed by the VLM in the framework of the inspection reports drawn up by it and about the type of infringements these referred to.

The table below shows the number of field identifications and the number of administrative fines imposed by the VLM in 2011 and 2012.

Administrative fines imposed by the VLM	2012	
	Number of field identifications	Number of fines
Administrative fines imposed by the VLM in keeping with the provisions included in the Flemish Parliament Act on Manure	101	3,942
Nitrogen and phosphate balance	0	686
Overfertilisation of a plot	5	31
More animals than nutrient emission rights (NER-D)	5	1,613
Unproven manure sales	0	0
Notification and cancellation of shipments	14	19
Late notification of shipments	0	0
Shipments without proof of dispatch or presentation of an agreement with the neighbours	2	3
Failure to establish or notify an agreement with the neighbours	2	4
Shipments without a correct and complete manure sales document	34	40
Failure to comply with the notification obligation	0	1,191
Erroneous notification	10	13
Failure to keep a register	0	2
Not keeping nutrient balances available for inspection	0	0
Shipment without mandatory documents	10	19
Refusal to use Sanitel	0	0
Failure to use or incorrect use of AGR-GPS	19	24
Manure processing obligation and processing of 25% NER	0	287
Manure excretion balances	0	10
Shipment by recognised shippers (notification or cancellation)	0	0
Shipment by recognised shippers (no shipping document)	0	0
Exceedance of nitrate residue in high-risk area	0	0
Refusal of sampling of nitrate residue in high-risk area	0	0
Cultivation plan and fertilisation plan/register for nitrate residue (both in and outside high-risk area)	0	0

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

The table above shows that in 2012 the VLM imposed 3,942 fines following 101 field identifications. The difference between the number of infringements identified in the field and the number of imposed fines originates from the term for the imposition of the fines. A fine was not always imposed in 2012 for all the identifications that were made in 2012. The fines imposed in 2012 may still relate to breaches that were identified during previous years. On the other hand, it is possible that breaches that were identified in 2012 were not fined until 2013. Moreover, the fines imposed in 2012 originate from breaches identified in the field, as well as from administrative inspections. This means that some of the fines were imposed administratively following the inspection of the database and that these are not reflected in the number of field identifications either.

The above table indicates, among other things, that 41.37% of the total number of imposed fines were imposed due to the fact that more animals were kept than nutrient emission rights were available, 30.21% due to failure to comply with the notification obligation. 17.40% of the administrative fines were imposed in the context of the nitrogen and phosphate balances.



FAUNA, NATURE & FORESTS

Long-eared owl (Asio otus) in Breendonk.

Photo © Lamberts Jan/ANB



5. Draft decree and recommendations

The structure of this fourth environmental enforcement report of the Flemish High Council of Environmental Enforcement is similar to that of the previous environmental enforcement reports, in view of the uniformity and comparison of the figures with previous years.

In the last section an overview will be given of the conclusions on the evaluation of the pursued environmental enforcement policy, the use of instruments and the sanctions policy in 2012.


5.1 Efforts

With regard to the **regional** environmental enforcement actors it could be concluded in the second chapter that 656 regional supervisors were appointed in 2012 by 10 regional bodies. This is an increase of 20 supervisors compared to 2011 when 636 supervisors were appointed.

The **average FTE** dedicated to environmental enforcement decreased slightly by regional supervisor from 0.28 FTEs in 2011 to 0.25 FTEs in 2012. However, the total number of performed inspections rose from 20,659 in 2011 to 28,750 in 2012. This growing number of inspections is owing to the changed counting method of two regional actors. The Flemish Agency for Care and Health included the water analyses of swimming pools, swimming ponds and the coast for the present environmental enforcement report. It did so following the decision to apply the definition of the concept 'inspection' as described in the VHRM glossary, in view of a uniform interpretation of the concept. The Flemish Land Agency decided to also count inspections under the Flemish Parliament Act on Manure in the figures of the Environmental Enforcement Act as of 2012.

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

When looking at the **police**, both local and federal, as environmental enforcement actor, it can be concluded that this actor drew up no less than 17,482 official reports in 2012 in the context of environmental enforcement. 97% of these official reports were drawn up by the local police and 3% by the federal police. This ratio, as well as the types of breaches for which an official report was drawn up in 2012, is similar to that of 2011. The number of official reports drawn up, on the other hand, decreased from 19,120 in 2011



to 17,482 in 2012. One possible explanation for the decrease in the number of official reports, drawn up by the police services and referred to the public prosecutor's office, is the fact that cases of 'nuisance' are now more than ever dealt with by the system of municipal administrative sanctions. Before that, official reports of environmental breaches were drawn up for these cases.

In the context of the National Safety Plan 2012-2015, the **federal police** carried out 650 proactive inspections in 2012 in the framework of waste shipments on the territory of the Flemish Region. 40 breaches were identified during these inspections. In 2011 and 2010, respectively 724 and 1,352 of these inspections were carried out by the federal police.

The present environmental enforcement report as well zooms in on the specific activities of the supervisors who are appointed with the **local police**. Almost 78% of the total of 117 police districts in the Flemish Region responded to the VHRM questionnaire. 26 of these 91 zones had a total of 45 supervisors at their disposal in 2012. This is a decrease compared to the 91 local police supervisors in 2011.

With regard to the activities of **provincial governors and mayors** in the context of the imposition of administrative measures and safety measures it can be concluded that none of the provincial governors used their authority to impose administrative or safety measures in 2012. In 2011, an administrative measure was imposed once by one of the provincial governors.

The responding mayors, on the other hand, indicated having imposed a total of 136 administrative measures at their own initiative or following a request or petition. This is almost the same as in 2011 when 142 administrative measures were imposed by the mayors. The majority of the administrative measures, namely almost 67%, were regularisation orders. In 2011, this amounted to 61%. In addition, 44 safety measures were imposed by mayors at their own initiative or following a request. In 2011, this number amounted to 26. Half of the safety measures which the mayors imposed in 2012 pertained to the suspension or execution of works, actions or activities, immediately or within a given term. In 2011, this was 42%.

It can be concluded that the trends in the performance of enforcement duties by mayors and provincial governors do not differ substantially from 2011.

In 2012, **provincial supervisors** were appointed for the first time, but only in the province of Antwerp. 8 provincial supervisors were appointed who dedicated a total of 0.2 FTEs to environmental enforcement duties in 2012. In addition, it was reported that one environmental enforcement inspection was carried out. No provincial supervisors were appointed yet in the other provinces, just like in previous years. Apart from the duties of the provinces under the Environmental Enforcement Act, their responsibilities as watercourse managers were also reported on. Within this framework the province also has a supervisory duty on the basis of legislation that was not included in Title XVI of the Environmental Enforcement Act. A total of 16 provincial staff members were appointed in the provinces to perform this duty. The identified breaches declined from 134 (2011) to 80 (2012). Chapter 2 also reported on the activities each province performed in the context of the Cooperation Agreement 2008-2013 in view of the support to the municipalities. In 2012, this support consisted especially of training in the new legislation on noise standards.

For the analysis of the efforts of the **municipal supervisors** the VHRM could count on a response rate of 73%, which is 224 of the 308 municipalities. The response rate has gradually increased since 2009 (60% in

2010 and 64% in 2011). In 2012, the total number of appointed municipal supervisors amounted to 238 (204 in 2011) and in total 67.94 FTEs were dedicated to environmental enforcement duties, which is an average amount of time dedicated by supervisors to supervisory duties of 0.29 FTEs. By way of comparison it can be mentioned that the average amount of time dedicated by a regional supervisor amounts to 0.25 FTEs (0.28 FTEs in 2011) and by a local police supervisor to 0.43 FTEs (0.31 FTEs in 2011).

In total, the municipal supervisors jointly carried out 4,748 environmental enforcement inspections in 2012 (4,740 in 2011), which is an average number of 20 inspections per supervisor (23 in 2011) and an average number of 70 inspections per FTE.

With regard to municipal supervisors it should be concluded that there is no uniform picture. In some municipalities the supervisors have been appointed for appearance's sake, since it was reported that no time was dedicated to environmental enforcement duties in 2012. However, other municipalities and cities have a number of supervisors at their disposal who dedicated a number of FTEs to environmental enforcement duties and who thus carried out a decent number of environmental enforcement inspections.

Chapter 2 of the present environmental enforcement report also reports on the activities of supervisors appointed within five **intermunicipal associations** that are active in the field of environmental enforcement. It can be concluded that this landscape of intermunicipal associations is still in full development.

The municipalities were also asked to indicate how many **Category 1, 2 and 3 plants** were present on their territory. In total, these numbers amounted to respectively 16,783, 44,999 and 104,579. In 2012, this was respectively 15,749, 40,317 and 116,732. In addition, it was asked after the number of nuisance-causing plants - plants that can be classified, on the basis of Vlarem, as Category 1, 2 or 3 plants - that have not yet been licenced as such. Their number amounted to 3,312 in 2012 and 3,245 in 2011.

With regard to the **appointment of municipal supervisors, supervisors of intermunicipal associations and local police supervisors** it can be concluded that a total of 434 local supervisors were appointed in 2012, 55% of which belonged to the municipality's own staff, 26% to the police district and 19% to an intermunicipal association. In 2011, 344 local supervisors were appointed, of which 59% belonged to the municipality's own personnel, 26% to the police district and 14% to an intermunicipal association. There is a clear increase among intermunicipal associations. At the same time it could be concluded that 8 of the 216 responding municipalities did not yet have a supervisor at their disposal in 2012 (3.75%). This is an important improvement in comparison with 2011 when 49 of the 196 responding municipalities (25%) did not yet have a supervisor at their disposal. This decrease can mainly be observed in the categories of smaller municipalities. It could already be concluded earlier that the total number of local supervisors increased, as well as the number of municipalities that had at least one supervisor at their disposal. The decrease in the average number of municipal supervisors can possibly be explained by the fact that a growing number of municipalities decide to call in the services of a supervisor from an intermunicipal association or of a police district supervisor.

5.2 Instruments

The third chapter of the present Environmental Enforcement Report 2012 discussed the use of the sepa-



rate environmental enforcement instruments in 2012.

A first important relevant conclusion is the fact that during 63% of the total of 23,136 performed environmental enforcement inspections **no breach** of an environmental regulation (in 2011: 68% of the total of 28,641 inspections) was identified. A breach was identified during 37% of the inspections (in 2011: 32%). This percentage may have to do with a high compliance rate or the lack of a risk-oriented approach and targeted supervision, but may possibly also be owing to the greater assertiveness of citizens. Complaints are often made to supervisors which are not a breach, but still give rise to an inspection. Finally, the counting method also impacts the percentage: there is not always a one-to-one relation between breaches and inspections.

Furthermore, it could be concluded that for almost 9% of the total of performed inspections the **result was unknown**. However, this lack of monitoring could only be observed for a limited number of enforcement actors. It is striking that no further action was taken for 22% of the inspections during which a breach was identified (environmental offence or environmental infringement). In 2011, this share amounted to only 1%. This percentage can possibly be explained by the fact that the identified breaches were environmental infringements and that the supervisors were therefore not obliged to draw up an identification report and to take further action following the identified breaches.

In 2012, a total of 2,922 **recommendations** were formulated by the different supervisors for a total of 23,136 inspections during which no breach was identified (respectively 2,035 and 19,412 in 2011). This is an application rate of 13%. The analysis also indicated that regional supervisors made substantially less frequent use of this instrument than local supervisors. Among the regional actors the instrument 'recommendation' is mainly used by AMV and OVAM.

For the instrument '**exhortation**' this ratio is just the opposite. All in all, a more intensive use of the instrument can be observed among regional supervisors. Whereas local supervisors formulated an exhortation for almost one-fifth of the inspections during which a breach was identified, this number increases for a regional supervisory body to 1.5 exhortations per inspection during which a breach was identified. Generally, the percentage use of this instrument is at 31%, which means that, in 2012, 4,143 exhortations were formulated on a total of 13,495 inspections during which a breach was identified (41% in 2011).

Just like in the previous environmental enforcement reports it can be concluded that supervisors make very limited use of the instrument '**identification report**' for an environmental infringement. In total, the supervisors reported having drawn up 77 identification reports in 2012, which is a use of less than 1% with respect to the total number of inspections during which a breach was identified (51 in 2011). However, there is a discrepancy between the number of identification reports indicated by the supervisors (77) and the number which the Environmental Enforcement, Environmental Damage and Crisis Management Division received in 2012 in view of the imposition of an exclusive administrative fine, namely 47. This same conclusion was also drawn for the previous years.

In the context of an enforcement campaign OVAM inspected during the past year the duty of waste producers to report the industrial waste they produced over the past calendar year through the Integrated Annual Environmental Report. During the past year this inspection resulted in more than 30 identification reports, which explains the large increase in environmental infringements compared to previous years.

In 2012, 2,254 **official reports** were drawn up by the supervisors (2,582 in 2011). This comes down to a percentage use of 17% compared to the total number of inspections during which a breach was identified (13,495 in 2012 and 9,229 in 2011). In 2011, this was 28%.

The supervisors jointly imposed 624 **administrative measures** in 2012, which is a percentage use of just under 5%. It is striking that more than half (63%) of the administrative measures were imposed by local supervisors. Almost half of the imposed administrative measures were regularisation orders, just like with the administrative measures imposed by the mayors. In 2011, only 349 administrative measures were imposed by the supervisors. The use of this instrument thus increased substantially in 2012. This is owing to a more frequent use by local supervisors.

In 2012, an **appeal rate** of 6% could be recorded with respect to the total of 624 administrative measures, which is 38 appeals, of which 26 were declared admissible (in 2011, 44 appeals were lodged and 34 were declared admissible). Just like in 2011, the Minister always reached a decision within the term laid down by Flemish Parliament Act.

Furthermore, it can be concluded in Chapter 3 that in 2012 6 appeals were lodged against refused petitions for the imposition of administrative measures (11 in 2011). Only one appeal was declared partially well-founded. The other 5 appeals were declared inadmissible or unfounded. In 2011, one appeal was declared fully inadmissible and 3 were declared partially inadmissible. In 2011 and 2012, any decisions regarding these appeals were taken by the Minister within the terms laid down by Flemish Parliament Act.


The instrument '**safety measure**' was discussed as well. In 2012, a total of 78 safety measures were imposed (56 in 2011). Just like for the administrative measures it can be concluded that the majority of these safety measures were imposed by local supervisors, namely more than 82% (85% in 2011). Furthermore, only two regional supervisory bodies used this instrument in 2012 (5 in 2011).

5.3 Imposition of sanctions

The fourth chapter focused on the imposition of criminal and administrative sanctions. It could be concluded, for instance, that the criminal divisions of the public prosecutor's offices in the Flemish Region recorded 5,021 **environmental enforcement cases** in 2012. This is a decrease compared to 2011 when 6,002 such cases were recorded.

The majority of these 5,021 cases originated from the general police, namely 3,237 cases. In addition, 1,570 cases originated from the inspection services. With regard to the theme of these 5,021 cases it could be concluded that 44.19% pertained to waste, almost 20% to emissions and another 20% to licences. A smaller part, namely 16%, concerned nature protection and almost 3% referred to manure.

The trend that could be observed in the previous environmental enforcement report can also be confirmed in the present environmental enforcement report. Almost 1,700 cases pertained to **illegal dumping**. As a result, a substantial part of the total number of cases recorded with the criminal divisions of the public prosecutor's offices in the Flemish Region had to do with illegal dumping, namely 33%.



Of these 3,048 dismissed cases almost 15% was, just like in 2011, dismissed for opportunity-based reasons, more than 38% for technical reasons, and more than 47% for 'other reasons', which are the 'administrative fine', the 'Praetorian probation' and the 'signalling of the offender'. In comparison with 2011, a decrease could be observed in 2012 in the percentage share of **dismissals** for opportunity-based reasons and an increase in the percentage share of dismissals for other reasons and dismissals for technical reasons. It is precisely these dismissals for 'other reasons' that are important to evaluate the implementation of the Environmental Enforcement Act. One of these other reasons is namely the decision not to impose criminal sanctions in view of the imposition of an administrative fine.

Imposition of administrative sanctions by the AMMC

The Environmental Enforcement, Environmental Damage and Crisis Management Division indicated having received a total of 1,545 cases from the public prosecutor's offices in the Flemish Region in 2012. It can be deduced from this that 31% of the total number of official reports which these public prosecutor's offices received are referred to the AMMC in view of the imposition of an administrative fine. This is a constant **increase** since the entry into effect of the Environmental Enforcement Act. Compared to 2011, the public prosecutor's offices referred even more environmental offences to the AMMC, proportionally speaking, so that they can focus increasingly on the more serious environmental offences. This shows that the objective of the Environmental Enforcement Act is put into practice and that the **two-fold track** (criminal/administrative) is successful.

In order to meet the objective of the Environmental Enforcement Act it is also important, however, to closely monitor the cases of administrative fines. In general, the AMMC received a total of 4,546 official reports from the public prosecutor's offices since the entry into effect of the Environmental Enforcement Act. Between 1 May 2009 and 31 December 2012, a decision was reached in 47% of these 4,546 cases. Of these 2,126 decisions, 1,470 constituted an alternative administrative fine, 82 an administrative transaction, and 448 a 'zero fine'. It was concluded 126 times that the official report did not fall within the scope of the Environmental Enforcement Act.

By reference to the Environmental Enforcement Report 2011, which stipulated that the flow of cases with the AMMC continues to be a point of focus, it can be concluded that the output regarding decisions to impose a fine increased substantially in 2012. The number of processed cases almost quadrupled compared to 2011, just like the number of cases in which a fine was imposed. This is mainly owing to an increased staff and to the implementation of additional efficiency measures. One of these efficiency measures that should effect an even better flow in the future is the **administrative transaction**. This was already used in a number of cases (82). However, it is too soon to conclude from this that there may be a larger percentage of handled cases, since the payment deadlines had not yet expired at the time the reports were drawn up. Therefore, no conclusions can be drawn as to the number of cases in which the transaction was accepted.

More than 42% of the cases which the AMMC received in 2012 pertained to environmental offences committed in the framework of waste. Naturally, this is not surprising, since more than 44% of the cases which the public prosecutor's offices received in 2012 also pertained to waste (43% in 2011).

Apart from the imposition of administrative sanctions for environmental offences, the treatment of **environmental infringements** was also reported on. In 2012, the AMMC received 47 identification reports

and reached 52 decisions regarding environmental infringements in 2012. As it turns out, this is not a one-to-one relation because of the terms that are linked to the procedure for exclusive administrative fines. If a more general evaluation is maintained, it can be concluded that the AMMC received 121 identification reports in the period from the entry into effect of the Environmental Enforcement Act (May 2009) to 31 December 2012. During that period, a decision was reached for no less than 87% of the cases. In 87 cases an exclusive administrative fine was imposed and in 8 cases it was decided not to impose an administrative fine. In addition, it was decided in 10 cases that the identification report did not fall within the scope of the Environmental Enforcement Act.

The **Environmental Enforcement Court** reported on the number of appeals it received in 2012 with regard to imposed exclusive and alternative administrative fines. In 2012, 82 appeals were lodged against imposed alternative administrative fines, which means that an appeal was lodged against at least 8% of the AMMC's decisions. In addition, it was indicated that 9 appeals were lodged against imposed exclusive administrative fines, which is an appeal rate of about 18%. These figures were similar in 2011, namely 9% and 16% respectively.

A last part in the section of the evaluation of the sanctions policy has to do with the activities of the **VLM** in the context of their authority to impose administrative fines. It could be concluded that in 2012 3,942 fines were imposed following 101 field identifications and administrative inspections. In 2011, 4,814 fines were imposed following 154 identifications and field inspections.

5.4 Recommendations

By virtue of Article 16.2.5 of the Environmental Enforcement Act the VHRM formulates recommendations in the environmental enforcement report for the further development of the environmental enforcement policy. One of the duties assigned to the VHRM is to propose main lines and priorities for the policy on environmental law enforcement.


Advisory opinion in the framework of the evaluation of the Environmental Enforcement Act 2012

In 2012, the VHRM formulated an extensive advisory opinion⁶⁵ in the context of the evaluation of the Environmental Enforcement Act. The recommendations in this advisory opinion were based, among other things, on findings from the previously published environmental enforcement reports (2009, 2010, 2011) and continue to be valid following completion of the Environmental Enforcement Report 2012, in particular the passages regarding the strategic multi-annual programme (page 28), the provincial supervisor (page 10) and the administrative penalty payment (pages 29 and 70).

Recording the number of plants and increasing the licencing rate

One of the most striking elements in the environmental enforcement landscape, as reported by the municipalities, is the fact that there are said to be more than 3,000 unlicensed nuisance-causing plants on the Flemish territory, and that municipalities often do not know how many Category 1, 2 and 3 plants are

65 <http://www.vhrm.be/documenten/adviezen/adv-12.1.10008-de-nota-evaluatie-milieuhandhavingsdecreet-vhrm.pdf>



located in their territory. The VHRM recommends supervisors to prioritise the *recording* of the plants located on their territory. In addition, the VHRM recommends supervisors to adopt a *systematic approach* (for instance, sector-based, geographical, percentage target figures per year) to *increase the licencing rate* on their territory. In fact, this meshes with the recommendations which the VHRM already formulated in the environmental enforcement reports 2009, 2010 and 2011, as well as the policy memorandum 2009-2014 of Minister Schauvliege, the Flemish Minister responsible for Environment.

Programme-based enforcement

As already explained in the report, it is difficult to draw a conclusion about the rate of compliance on the basis of the data in the report regarding the inspections during which no breach was identified. Indeed, it is impossible to make any statements about this solely on the basis of the fact that in accordance with the figures no breach was identified during more than 63% of the implemented environmental enforcement inspections. On the other hand, (especially regional, but also some local) environmental enforcement actors are adopting an innovative approach to the way in which enforcement could be planned: an *ad hoc* approach to enforcement will gradually be replaced by a more programme-based enforcement, for instance within a flexible or rolling multi-annual programme in the medium-term, with a specific risk analysis angle: what impact do certain breaches have on the environment? Because the enforcement actors were also questioned about their priorities and multi-annual planning for the report 2012, in addition to the normal questionnaire of the past years, it was possible to gain an insight into this new trend. The VHRM recommends the regional enforcement actors to take the lead in the strategic multi-annual planning, whilst devoting a section to risk-based enforcement. The VHRM itself will draw up a strategic multi-annual programme to replace the former annual environmental enforcement programme, as soon as this has been embedded in the Environmental Enforcement Act (modification planned in 2013).

The role of intermunicipal associations for smaller municipalities

Specifically in the context of local environmental enforcement and local supervisors, the VHRM wishes to recommend that it is examined in those municipalities that only appointed a supervisor *for appearance's sake* (and where 0 or hardly any FTEs are thus dedicated to environmental enforcement duties by the appointed supervisors) to what extent the organisation of intermunicipal cooperation is possible and can be encouraged. As already reported in the Environmental Enforcement Reports 2009, 2010 and 2011, it seems advisable, especially for smaller municipalities, to make more frequent use of supervisors who are appointed via intermunicipal associations. The use of an intermunicipal association may result in an increased scale in terms of expertise and spatial employability, which will benefit the quality and effectiveness of enforcement. Precisely because supervisors in smaller municipalities often cannot dedicate a full-time equivalent to supervision (and supervision is often to be combined with other duties), the use of an intermunicipal association may increase the effectiveness of enforcement for smaller municipalities. With the cooperation through intermunicipal partnerships it can also be avoided that local civil servants have to exercise supervision over a plant or a site where they previously gave advice or with which they have family or friendly ties, which is sometimes unavoidable in small municipalities. The VHRM recommends the Government of Flanders to encourage smaller municipalities to join such intermunicipal associations, with an eye to receiving support in terms of environmental enforcement.

Proactive inspections at the local level

The concept memorandum to the members of the Government of Flanders on the evaluation of the Environmental Enforcement Act of 20 July 2012 stipulates that the plan-based supervision of Category 2 plants is devolved to the Region and that local supervisors are responsible for reactive inspections and first line supervision in case of complaints, irrespective of the category of plant. However, given the fact that a reasonable share of the inspections carried out by local supervisors are proactive inspections, the VHRM recommends that municipalities are given the opportunity to choose between only exercising reactive supervision or in addition also continuing to carry out proactive inspections. It would be a shame to deny local supervisors the proactive supervision, since a number of municipalities are finally starting to bear the fruit of years of continued effort. It is recommended not to allow this expertise, motivation and experience to go lost and to allow municipalities to decide this for themselves.

Provincial supervisors

In 2012, the first *provincial* supervisors were appointed, but only in the province of Antwerp. The other provinces still did not have any provincial supervisors at their disposal in 2012. The VHRM recommends that other provinces also appoint supervisors.

It also recommends to give provincial supervisors the possibility to exercise supervision in other provinces, provided certain conditions are met. This does not release the province from its obligation to appoint supervisors as stipulated in the Environmental Enforcement Act.

Support by provinces: providing uniform training programmes

The VHRM recommends that the training programmes for local supervisors, organised by the provinces, are made uniform. This is recommended to achieve a more consistent interpretation of the law, a high standard for both the theoretical and practical aspects of supervision, a quick follow-up of new legislation, knowledge-sharing and the anticipation of problems. The first steps towards that end have already been taken by the provinces in 2013.

Average amount of time dedicated

In the present environmental enforcement report it can be concluded that the average number of FTEs per supervisor increased among *local* supervisors⁶⁶, whereas this number decreased slightly among *regional* supervisors⁶⁷ in 2012 compared to 2011. The VHRM recommends that all supervisors continue their efforts to sustain the current number of FTEs dedicated to supervision and, if possible, increase this number in the future, especially now that the foundations of expertise and knowledge have been laid among many local supervisors.

66 Local police supervisors from 0.31 FTEs to 0.42 FTEs; municipal supervisors from 0.21 FTEs to 0.29 FTEs.

67 From 0.28 FTEs to 0.25 FTEs.

Minimum amount of FTEs

The obligation laid down in the Flemish Parliament Act to have a minimum number of supervisors at one's disposal has the disadvantage that supervisors can be appointed without having to dedicate any time to

enforcement. The recommendation of a minimum number of FTEs per municipality in addition to the obligation to have a minimum number of supervisors could provide the necessary impulse to avoid appointments for appearance's sake. To this end, a test framework first needs to be developed on the basis of which a suitable minimum use of FTEs can be deduced and tested in function of the characteristics of a municipality and taking account of both proactive and reactive enforcement actions.

New instruments

In the past the VHRM advised to include the instrument 'administrative transaction' (in the sense of an amicable settlement, to be proposed to the suspected offender by the AMMC), in the Environmental Enforcement Act. The administrative transaction, i.e. summary proceedings with the AMMC, was introduced in 2012 and the first figures were presented in the present environmental enforcement report. Future environmental enforcement reports will further monitor this instrument and will show which contribution these proceedings make to a smoother flow of cases.

The VHRM always places the instrument 'administrative transaction' in the chapter concerned in a separate table. The reason for this is that the decision to impose an administrative transaction is a *proposal* for payment, which means that a 'decision' can still be taken in case of non-payment and the case is only closed after payment. Therefore, it is not useful to include this in the table 'decisions' (which also encompasses 'no fine' and 'a fine').

As for the administrative penalty payment, the relevant recommendation which the VHRM formulated in the memorandum on the evaluation of the Environmental Enforcement Act still applies. Again, the VHRM recommends that this instrument is added as *accessory* to the instrument 'administrative measure' for those cases in which administrative measures are not implemented in time, provided a number of conditions are met.⁶⁸

68 Conditions:

- ▶ *The legislation must explicitly formulate the use of the instrument as a discretionary power: the penalty must be a complementary measure and the content of the measure is of primordial importance (discretionary complementary measure).*
- ▶ *The legislation must provide the necessary flexibility for the use of this instrument. It is not useful to draw up a list of breaches for which the instrument can be used. It is also necessary to offer sufficient flexibility for an administrative measure: in case of several breaches, it should be possible to impose a different penalty per type of requested restoration;*
- ▶ *drawing up clear policy lines with regard to the taxation, timing and amount of the penalty. This is a duty for the supervisory bodies and these policy lines should not be laid down in Flemish Parliament Acts or regulations.*
- ▶ *The introduction of the instrument should go hand in hand with sufficient and targeted training for supervisors. In that sense the joint training for municipal and regional supervisors is a point of focus. In the context of effectiveness, it could also be considered to promote/ provide complementary teams, since specific knowledge (legal, environmental/economic) and expertise are in any case required.*

Identification report

In the previous environmental enforcement reports the VHRM already pointed out the low use of the identification report for environmental infringements. It turned out that in 2012 as well, little use is still made of this identification report. The reason for this is not clear. What is clear is that supervisors are not obliged by Flemish Parliament Act to draw up such a report when they identify an environmental infringement.

At this moment, an environmental infringement is defined as a type of behaviour that is in contravention of the regulation that is enforced in application of this title. This behaviour:

- ▶ is exclusively a violation of administrative obligations, as stipulated in the environmental legislation, specified in Article 16.1.1, first sub-paragraph;
- ▶ is not related to any emissions mentioned in Article 16.6.2;
- ▶ does not concern the disposal, management or shipment of waste as specified in Article 16.6.3;
- ▶ does not cause any health damage or death;
- ▶ cannot be penalised with criminal sanctions in keeping with the provisions of this title;
- ▶ must be included on a list to be determined by the Government of Flanders.
- ▶ The report showed that there is a difference between the number of identification reports which the AMMC received and the number of identification reports drawn up between certain actors. The VHRM glossary and the greater familiarity with the procedure have changed this to a large extent. The VHRM recommends that this is examined in view of next year's report.

It also recommends to examine whether the current list of environmental infringements can be extended. It should be stressed that the decriminalisation should not result in environmental infringements no longer or not sufficiently being inspected in view of an effective enforcement. Therefore, the VHRM recommends that in case of a further decriminalisation the required enforcement actions are put forward to inspect the decriminalised provisions (environmental infringements), in addition to the inspection of environmental offences.

Administrative enforcement

The double enforcement track as objective of the Environmental Enforcement Act continues to prove its use. Although fewer environmental enforcement cases were recorded by the public prosecutor's offices,

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- ▶ *The instrument should be evaluated at regular intervals.*
 - ▶ *The penalty should be collected at the administrative level at which the penalty has been imposed. The members of the workshop wish to point out cautiously that the current regulation of the administrative measure contains a situation that can be improved: when the Minister lets the term for an appeal pass, the administrative measure lapses and therefore also the penalty.*

Finally, the members of the workshop suggest the possibility of paying the collected money into a fund to be established for the official implementation of the administrative measure (administrative enforcement).

the figures still show that the percentage share of the number of cases referred to the AMMC increased by over 4 percent. It should be mentioned as a note and a point of focus here that large regional differences can still be observed between the public prosecutor's offices. As a result, the need for increased alignment between the different public prosecutor's offices continues to exist. It should also be examined whether the number of dismissals for opportunity-based reasons can be reduced even further by referring these cases to the AMMC in order to allow for proper action to be taken for each breach.

The administrative transaction

The administrative transaction was introduced as part of the imposition of fitting sanctions for certain environmental breaches. This instrument could lead to an even greater output for the AMMC and has been in use since September 2012. It applies to the simpler cases in which the breaches are clear and the offender is unmistakably guilty. In the last four months of 2012 the instrument was already applied 82 times. One of the great advantages of this is that a quick response is given (tit-for-tat policy). The VHRM will specifically explain the use of this instrument in the following report.

Recommendations with regard to the content of the report

Terminology

Legally and technically speaking, there is a fixed terminological use of the concepts 'infraction', 'misdemeanor' and 'felony', as described in Article 1 of the Code of Criminal Procedure. In the Criminal Procedure Code, 'infraction', 'misdemeanor' and 'felony' are defined as three types of offences which are named differently according to the seriousness of the sentence that is attached to it, respectively a police sentence, a correctional sentence and a criminal sentence. However, the Environmental Enforcement Act mainly speaks of environmental infringements on the one hand and environmental offences on the other (which are in practice mainly 'misdemeanors'). The report often uses the term 'infractions' to refer to both types. It is recommended to replace the concept 'infraction' in the future by 'violation' or 'violation of an environmental regulation' and that the criminal law concepts are also explained in the VHRM glossary.

Impact of the GAS law on environmental enforcement

In 2012, fewer official reports were submitted to the public prosecutor's offices by the police as well as by the inspection services (decrease of 16%). One possible explanation for the decrease in the number of official reports, drawn up by the police services and referred to the public prosecutor's offices, is the fact that cases of 'nuisance' are now more than ever dealt with by the system of municipal administrative sanctions (gemeentelijke administratieve sanctie or GAS)⁶⁹. Before that, official reports were drawn up with regard to environmental breaches. Given the new terms for the GAS fine since the law modification on 30 May 2013 and the reporting on the frequent use thereof in the media, it is important to closely monitor the impact of the GAS system, since local environmental enforcement largely has to do with small types of nuisance, which can be fined through the GAS system (such as illegal dumping).

⁶⁹ Act of 13 May 1999 introducing municipal administrative sanctions. This Act was amended on 30 May 2013 and caused a great deal of controversy in the media because the age limit was lowered and the maximum fine was increased.

Research for the future

There is no explanation for the fact that, percentage wise, an amicable settlement was proposed for a large share of the cases regarding air, water, soil and noise. The general increase in the number of amicable settlements is remarkable as well. Furthermore, it is not clear why the number of police district supervisors has decreased (from 91 to 45). Another remarkable element is the lower number of proactive inspections of waste shipments by the federal police. The VHRM recommends to examine these issues and to draw relevant conclusions, if possible, in view of next year's report.

Structure of the report

The VHRM will scrutinise the current processing (comparison and order) of the figures and questionnaire. Which comparisons are not useful? Which data cause confusion rather than clarify matters? Naturally, when doing so account must always be taken of the provisions of Art. 16.2.5 of the Environmental Enforcement Act.

It is also recommended as of 2013 to extend the tables and graphs in terms of time (complete overview of figures from 2009 to 2013 instead of a comparison with the previous year), now that four years have passed since the entry into effect of the Environmental Enforcement Act. This is also important in the light of the future strategic multi-annual programme of the VHRM.

An even better response is needed

Although the response rate increases every year and some municipalities spontaneously already asked in January, for instance, to complete the questionnaire, the figures in the report are still not sufficiently complete. The VHRM recommends to stress the importance of completing the questionnaire to all the bodies concerned.



Annexes

INDUSTRY, ECONOMY

Windmill foot in Willebroek. De pillars serve as socle for windmills in the sea.

Photo © Lamberts Jan/ANB



Annexes



Glossary of terms - abbreviations

Enforcement actors and institutions

- ▶ ALBON Afdeling Land en Bodembescherming, Ondergrond en Natuurlijke Rijkdommen van het departement Leefmilieu, Natuur en Energie (Land and Soil Protection, Subsoil and Natural Resources Division of the Department of Environment, Nature and Energy)
- ▶ AMI Afdeling Milieu-inspectie van het departement Leefmilieu, Natuur en Energie (Environmental Inspectorate Division of the Department of Environment, Nature and Energy)
- ▶ AMMC Afdeling Milieuhandhaving, Milieuschade en Crisisbeheer van het departement Leefmilieu, Natuur en Energie (Environmental Enforcement, Environmental Damage and Crisis Management Division of the Department of Environment, Nature and Energy)
- ▶ AMV Afdeling Milieuvergunningen van het departement Leefmilieu, Natuur en Energie (Environmental Licences Division of the Department of Environment, Nature and Energy)
- ▶ ANB Agentschap voor Natuur en Bos (Agency for Nature and Forests)
- ▶ AWW Agentschap Wegen en Verkeer (Agency for Roads and Traffic)
- ▶ AZ&G Agentschap Zorg en Gezondheid (Agency for Care and Health)
- ▶ MHHC Milieuhandhavingscollege (Environmental Enforcement Court)
- ▶ MOW Departement Mobiliteit en Openbare Werken (Department of Mobility and Public Works)
- ▶ OVAM Openbare Vlaamse Afvalstoffenmaatschappij (Public Waste Agency of Flanders)
- ▶ SG Secretary-General of the Department of Environment, Nature and Energy
- ▶ VHRM Vlaamse Hoge Raad voor de Milieuhandhaving (Flemish High Council of Environmental Enforcement)
- ▶ VLM Vlaamse Landmaatschappij (Flemish Land Agency)
- ▶ VMM Vlaamse Milieumaatschappij (Flemish Environment Agency)
- ▶ VVP Vereniging van Vlaamse Provincies (Association of Flemish Provinces)
- ▶ VVSG Vereniging van Vlaamse Steden en Gemeenten (Association of Flemish Cities and Municipalities)

Environmental enforcement terminology

- ▶ DABM Flemish Parliament Act of 5 April 1995 containing general provisions on environmental policy
- ▶ GAS Gemeentelijke Administratieve Sanctie (Municipal Administrative Sanction)
- ▶ MHR Milieuhandhavingsrapport (Environmental Enforcement Report)
- ▶ PV Proces-verbaal (Official report)

Other

- ▶ ANG Algemene Nationale Gegevensdatabank (General National Database)
- ▶ AGR-GPS Any means of transport used by a recognised Category B or Category C manure transporter for the transportation of manure or other fertilisers must be AGR-GPS compatible at all times.

This AGR-GPS compatibility means that all recognised means of transport must be fitted with AGR-GPS equipment that is part of an operational AGR-GPS system. In addition, the signals sent by this equipment via a computer server which is managed by a GPS service provider, must be directly and immediately sent to the Manure Bank.
- ▶ B.S. Belgian Official Journal
- ▶ ECO-form Document which is completed by the police during waste shipment inspections and then sent to the central Environment Service in the framework of centralised data collection. Besides the purpose of control of individual shipments, the data are used to perform operational and strategic analyses.
- ▶ PIVO Provinciaal Instituut voor Vorming en Opleiding (Provincial Institute for Training and Education)
- ▶ REA/TPI National IT programme for courts of first instance with applications for criminal divisions of public prosecutor's offices and registries, youth court prosecutors and registries, civil registries
- ▶ FTE Full-time equivalents
- ▶ - Not available
- ▶ / Other
- ▶ Grey shading Non-response

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List of responding municipalities

Aalst	Deerlijk	Herent	Kruishoutem
Aalter	Deinze	Herentals	Laakdal
Aarschot	Denderleeuw	Herenthout	Laarne
Aartselaar	Dendermonde	Herne	Lanaken
Alken	Dentergem	Herselt	Landen
Antwerp	Destelbergen	Herzele	Langemark-Poelkapelle
Anzegem	Diepenbeek	Heusden-Zolder	Lebbeke
Arendonk	Diest	Heuvelland	Lede
As	Dilbeek	Hoeselt	Lendelede
Asse	Dilsen-Stokkem	Hooglede	Leopoldsburg
Balen	Drogenbos	Hoogstraten	Leuven
Beernem	Duffel	Horebeke	Lichtervelde
Beerse	Eeklo	Houthulst	Liedekerke
Beersel	Erpe-Mere	Hove	Lier
Begijnendijk	Evergem	Huldenberg	Lint
Beringen	Galmaarden	Hulshout	Linter
Berlaar	Gavere	Ichtegem	Lokeren
Bever	Geel	Ieper	Londerzeel
Bilzen	Geetbets	Ingelmunster	Lo-Reninge
Blankenberge	Genk	Izegem	Lubbeek
Boechout	Ghent	Jabbeke	Maarkedal
Bonheiden	Geraardsbergen	Kampenhout	Maaseik
Boom	Gingelom	Kapellen	Maldegem
Boortmeerbeek	Glabbeek	Kasterlee	Malle
Borgloon	Gooik	Keerbergen	Mechelen
Bornem	Haacht	Kinrooi	Meerhout
Borsbeek	Haaltert	Knesselare	Meeuwen-Gruitrode
Boutersem	Halle	Knokke-Heist	Meise
Brakel	Ham	Koekelare	Merchtem
Brecht	Hamme	Koksijde	Merelbeke
Bredene	Hamont-Achel	Kortemark	Merksplas
Bree	Harelbeke	Kortenaken	Meulebeke
Bruges	Hechtel-Eksel	Kortenberg	Middelkerke
Damme	Heers	Kortesseem	Mol
De Panne	Heist-op-den-Berg	Kraainem	Moorslede
De Pinte	Hemiksem	Kruibeke	Mortsel

Nazareth	Retie	Temse	Willebroek
Neerpelt	Roeselare	Ternat	Wingene
Niel	Roosdaal	Tessenderlo	Wommelgem
Nieuwpoort	Ruiselede	Tienen	Wortegem-Petegem
Olen	Rumst	Tongeren	Zandhoven
Oosterzele	Schelle	Torhout	Zedelgem
Oostkamp	Scherpenheuvel-Zichem	Turnhout	Zele
Oostrozebeke	Schilde	Veurne	Zemst
Opglabbeek	Schoten	Vilvoorde	Zingem
Opwijk	Sint-Amands	Vleteren	Zoersel
Oudenaarde	Sint-Genesius-Rode	Voeren	Zomergem
Oudenburg	Sint-Gillis-Waas	Vosselaar	Zonhoven
Oud-Heverlee	Sint-Katelijne-Waver	Waregem	Zonnebeke
Oud-Turnhout	Sint-Laureins	Wellen	Zottegem
Overijse	Sint-Lievens-Houtem	Wemmel	Zoutleeuw
Pittem	Sint-Niklaas	Wervik	Zuienkerke
Poperinge	Sint-Pieters-Leeuw	Wetteren	Zulte
Puurs	Sint-Truiden	Wevelgem	Zwalm
Ranst	Staden	Wezembeek-Oppem	Zwevegem
Ravels	Steenokkerzeel	Wijnegem	Zwijndrecht

List of responding police districts

Police district Antwerp	Police district Kempen N-O
Police district Aalst	Police district Kempenland
Police district Aalter/Knesselare	Police district Klein Brabant
Police district Aarschot	Police district K-L-M
Police district Assenede/Evergem	Police district Lanaken-Maasmechelen
Police district Balen/Dessel/Mol	Police district Landen
Police district Beringen/Ham/Tessenderlo	Police district Leuven
Police district Berlaar/Nijlen	Police district Lier
Police district Beveren	Police district Lokeren
Police district Bierbeek/Boutersem/Holsbeek/Lubbeek	Police district Lommel
Police district Bilzen/Hoeselt/Riemst	Police district Maasland
Police district Blankenberge/Zuienkerke	Police district Maldegem
Police district Boortmeerbeek/Haacht/Keerbergen	Police district Mechelen
Police district Bredene/De Haan	Police district Meetjesland-Centrum

Police district Bruges
Police district Buggenhout/Lebbeke
Police district Damme/Knokke-Heist
Police district Deinze/zulte
Police district Demerdal - DSZ
Police district Denderleeuw/Haaltert
Police district Dilbeek
Police district Druivenstreek
Police district district Gaoz
Police district Gavers
Police district Geel/Laakdal/meerhout
Police district Ghent
Police district Grens
Police district Grensleie
Police district Hageland
Police district Hamme/Waasmunster
Police district HANO
Police district Hazodi
Police district Heist
Police district Hekla
Police district HERKO
Police district Het Houtsche
Police district Heusden-Zolder
Police district Houthalen-Helchteren
Police district KASTZE
Police district Noordoost-Limburg
Police district Oostende
Police district Pajottenland
Police district Polder
Police district Regio Turnhout
Police district RODE
Police district Ronse
Police district Middelkerke
Police district MIDOW
Police district MIRA
Police district Ninove
Police district Noord
Police district Rupel
Police district Schelde-Leie
Police district Sint-Gillis-Waas/Stekene
Police district Sint-Niklaas
Police district Sint-Pieters-Leeuw
Police district Sint-Truiden/Nieuwerkerken/Gingelom
Police district Spoorkin
Police district TARL
Police district Tervuren
Police district Tielt
Police district Tienen/Hoegaarden
Police district Tongeren/Herstappe
Police district Vilvoorde/Machelen
Police district Vlaamse Ardennen
Police district VLAS
Police district Voeren
Police district Voorkempen
Police district Westkust
Police district Wetteren/Laarne/Wichelen
Police district Willebroek
Police district WOKRA
Police district ZARA
Police district Zaventem
Police district Zottegem/Herzele/Sint-Lievens-Houtem
Police district Zuiderkempen
Police district Zwijndrecht

COLOPHON

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