

AIR QUALITY GOVERNANCE LEKGOTLA: OCTOBER 2011



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Overview

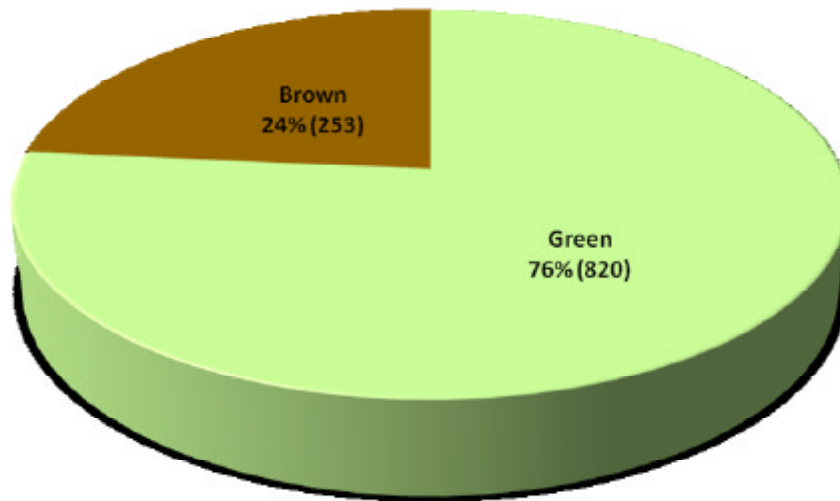


- Project – designation of local EMIs
- Focus for compliance monitoring
- Enforcement options
- Criminal Cases

EMI Capacity

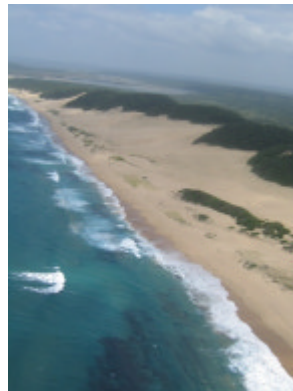
INSTITUTION	2008-2009	2009-2010	2010-2011
SANPARKS	634	782	603
National DEA	44	57	51
Isimangaliso WPA	1	1	1
Western Cape	39	40	43
Cape Nature	4	3	2
KwaZulu-Natal	21	25	25
Ezemvelo KZNW	22	23	159
Gauteng	38	32	51
Limpopo	16	15	33
Eastern Cape	24	22	26
Eastern Cape Parks and Tourism Agency	?	?	3
Free State	15	15	21
Mpumalanga	14	14	14
Mpumalanga T& PA	11	11	11
Northern Cape	13	12	11
Northwest	7	21	22
TOTAL	903	1073	1081

Biodiversity/Conservation vs Pollution and Waste EMI



SEMAs – impact

- Since commencement of SEMAs in April 2010, **local authorities have become increasingly responsible for undertaking EMI duties** in relation to key provisions;
- These duties relate **mostly to the “brown” issues**, but there is a role to play in **“green”** – locally protected areas (NEM:PAA); and the regulation of alien and invasive species (NEM:BA) and **“blue”** – coastal access land (NEM:ICM) subsectors



EMI mandate – national, provincial and local



Exclusive National	Exclusive Provincial	Concurrent National and Provincial	Local
<ul style="list-style-type: none"> •National parks, •Botanical gardens; and •Marine resources 	<ul style="list-style-type: none"> •Abattoirs •Provincial planning; •Provincial recreation; •Veterinary services, 	<ul style="list-style-type: none"> •Environment; •Nature Conservation •Pollution control •Soil conservation 	<ul style="list-style-type: none"> •Air pollution; •Beaches and amusement facilities; •Cleansing; •Control of public nuisances; •Municipal parks and recreation; •Noise pollution; •Refuse removal, refuse dumps and solid waste disposal;
RESIDUAL NATIONAL MANDATE - LAW ENFORCEMENT			

Outcome 10 – local EMLs

- Presidents' top 12 priorities: environment is Outcome 10
- Each priority has a Delivery Agreement that sets out the targets, indicators and responsibilities;
- Cross-cutting performance indicators:
150 trained local government officials designated as EMLs by **March 2012**

TARGET/INDICATOR	ACTIVITIES	MILESTONES/DELIVERABLES			
		YEAR 1	YEAR 2	YEAR 3	YEAR 4
OUTCOME 10 CROSS-CUTTING SUB-OUTPUTS					
Sub-output 1: Environmental legislation compliance and enforcement					
Environmental crimes allocated dedicated time in 4 mainstream courts by May 2011	Launch of the dedicated time for environmental crimes	Launch in Mpumalanga in September 2010 as a pilot project. The project to be reviewed after a year.	Assessment of the pilot project and possible extension to the remaining regional courts/ district courts in other provinces	Environmental crimes allocated time and handled in all mainstream regional/ districts courts in the country	
150 Environmental Management Inspectorate designated by 2011	Conduct training of Environmental Management Inspectors	Designation of 150 trained Local government officials as EML by MEC	NEMA to be amended to provide for Designation of EMLs by local authorities	Designation of EMLs functions carried out at local government level	

NEM:AQA: Local Authority

Functional area of exclusive local authority	Schedule to the Constitution	Compliance and Enforcement Duty in SEMA	Section in NEM:AQA
Air Pollution	Schedule 4 Part B	Compliance and enforcement with the conditions of an atmospheric emission licence (AEL)	S51(1)(e) & (3)
		Enforcement in respect of facility undertaking a listed activity without an AEL (i.e. illegal activity).	S22 read with S51(1)(a)
		Compliance and enforcement in respect of the manufacture, sale or use of any appliance or conduct an activity declared as a controlled emitter unless that appliance or activity complies with the standards established in terms of section 24.	S25 read with S51(2)
		Enforcement response for failure to submit an atmospheric impact report requested by the municipal air quality officer	S51(1)(c)
Noise pollution	Schedule 5 Part B	Compliance and enforcement in respect of standards published by the Minister for the control of noise .	S34
Control of public nuisances	Schedule 5 Part B	Compliance and enforcement in respect of regulations published by the Minister/MEC for the control of dust	S32
		Compliance and enforcement in respect of regulations published by the Minister/MEC for the offensive odours	S35

Designation of Local EMLs – WGIIV project

1. Establishment of National Framework
 - a. National Guideline for Municipal EMLs
 - b. Implementation Protocol Template
2. Implementation of provincial designation system
3. Provincial compliance and enforcement support programme
4. Clarify accountability and reporting procedures
5. Performance assessment and delegation



National Guideline



- Designating Authority
- Mandate
- Grades and Powers
- Dual Designations
- Funding
- Priorities
 - NEM:AQA;
 - NEM:WA;
 - NEM:ICM;
 - NEM:PA
 - NEM:BA

WGIV Project Implementation Plan

Deliverable	Activity undertaken/to be undertaken	Timeframe	Status	Responsibility
STAGE 1: ESTABLISHMENT OF A NATIONAL FRAMEWORK				
1.1 Stakeholder Engagement	Multi-stakeholder workshop held with various national, provincial and local authorities	Jan 2010	Completed	DEA
1.2 National Guideline for Local Authority EMI Roll Out	Consultation with local authorities through DEA ASD: Local Government Support, MINTECH WGIV, MINTECH and MINMEC approval	Dec 2010	Completed	DEA
1.3 Provincial Nodal Points nominated for project	MINTECH WGIV members listed as provincial nodal points	Mar 2011	Completed	DEA

WGIV Project Implementation Plan

STAGE 2: IMPLEMENTATION OF A PROVINCIAL DESIGNATION SYSTEM FOR LOCAL AUTHORITY EMIS

<h3>2.1 Implementation Protocol (IP)</h3>	<ul style="list-style-type: none"> • Communication from MEC to Executive Mayors/Councils re: nature and purpose of the IP (letters, MEC-MMC forums etc.); • Identify Responsible Persons in terms of the IP (same as provincial nodal points?); • Send draft IP to Legal Services sections for vetting; • Signature of the IP between the MEC and the Executive Mayor prior to any designation 	<p>To be done</p>	<p>Provincial nodal points</p>
<h3>2.2 Designated local authority EMIs</h3>	<ul style="list-style-type: none"> • Identify local authority officials that have already received EMI Basic Training; • Develop local authority EMI register to capture all designated municipal EMIs plus report to national DEA for overall national register; • Provincial and local “responsible persons” to agree on mandate and grade to be designated (re: Annexure to National Guideline); • Preparation and signature of local authority EMI designation letters; 	<p>To be done</p>	<p>Provincial nodal points</p>

This is where the project is at the moment!

This is where we need to be by March 2012 x 150 officials

Provincial Nodal Points

Name and Surname	Institution	E-mail	Tel No	Fax
Mark Jardine	National Department of Environmental Affairs	mjardine@environment.gov.za	(012)3103375	(012)3101974
Carene Wessels	North West: Department of Agriculture, Conservation, Environment and Rural Development	cwessels@nwpg.gov.za	018-389 5986	086-5817858 018-389 5006
Khumbulani Mbatha	Kwa-Zulu Natal: Department of Agriculture, Environmental Affairs and Rural Development	mbathakd@uld.kzntl.gov.za	0358743301 0827772412	0357772412
Div de Villiers	Eastern Cape Department of Economic Development and	Div.DeVilliers@deaet.ecape.gov.za	0824170155	0406352353

Provincial Nodal Points

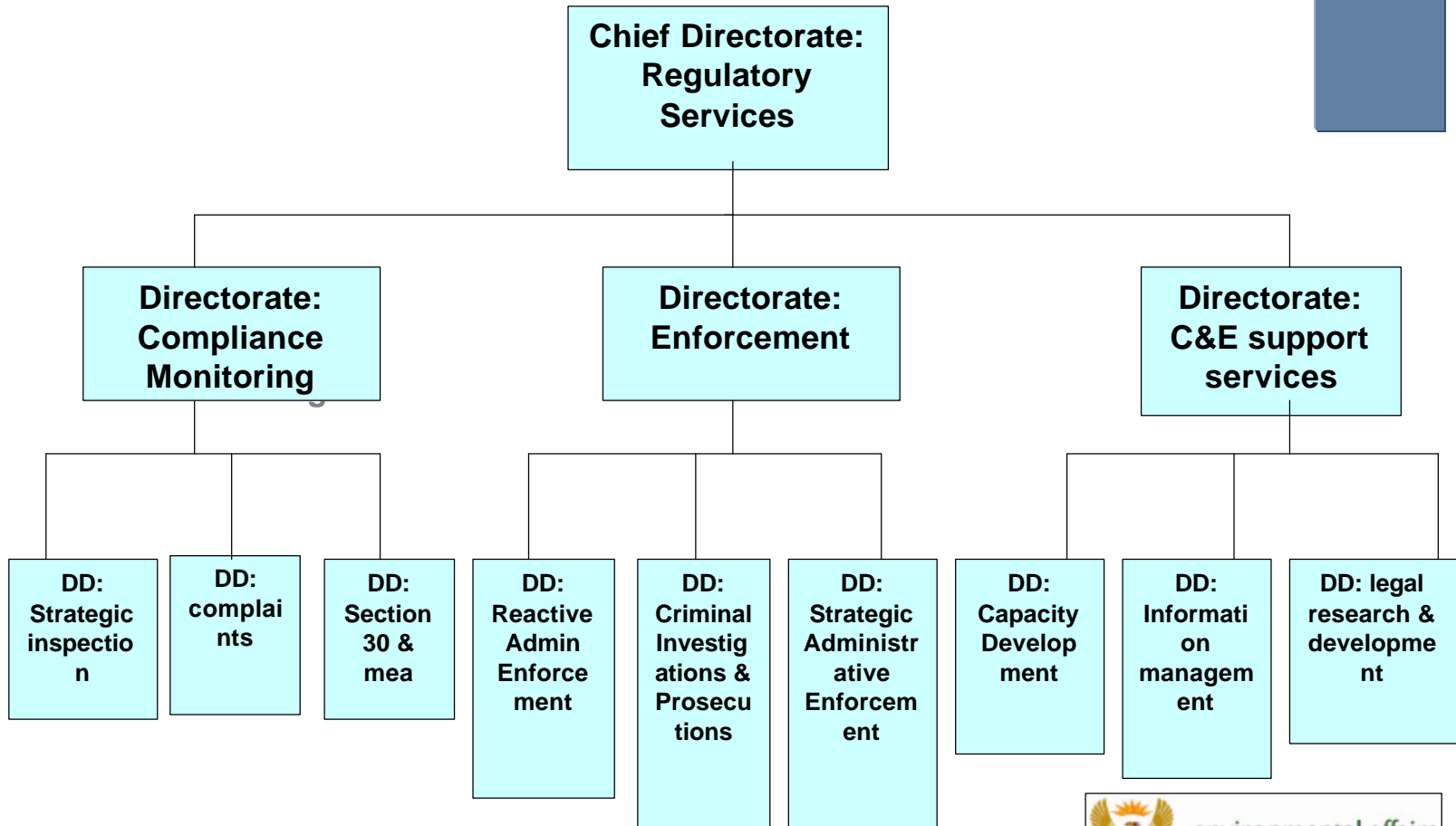
Name and Surname	Institution	E-mail	Tel No	Fax
Werner Boing	Free State Department of Economic Development, Tourism and Environmental Affairs	boing@detea.fs.gov.za	051 4009535 0827894468	0514009538 086 622 1903
Obopeng Gaoraelwe	Northern Cape Department of Environment Affairs and Nature Conservation	ogaoraelwe@half.ncap.e.gov.za	053 807 7347 083 414 0310	053 831 3530
Sanjay Dubru	Gauteng Department of Agriculture and Rural Development	Sanjay.dubru@gauteng.gov.za	0113551000 0827290695	
Phillip Monyepao	Limpopo: Department of Economic Development, Environment and Tourism	monyepaomp@ledet.gov.za	0823306325	0152954869
Pamela Ntuli	Mpumalanga Department of Economic Development, Environment and Tourism	pnntuli@mpg.gov.za	013 759 4104 082 520 3680	0865126953
Eshaam Palmer	Western Cape Department of Environmental Affairs and Development Planning	epalmer@pgwc.gov.za	0214833506 0782669570	

EMI – EHP Project



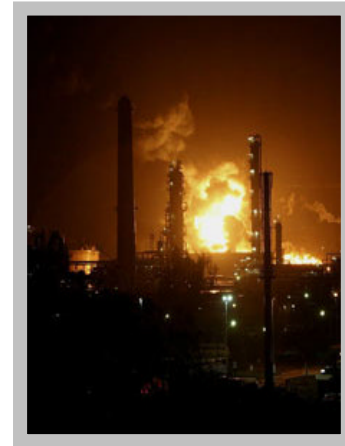
- Since 2008, DEA liaised with the **HPCSA** regarding this relationship
- Overlap in the mandates
- February 2011, meeting with HPCSA, SAIEH and 7 Universities of Technology:
 - a) including the EMI content into the national diploma/degree**
 - b) developing an abridged bridging course for practising EHPs**
- 2011 – DEA developed draft course outcomes, course material and training programme
- August 2011 – HPCSA education sub-committee gives in principle approval for the project
- September 2011 – 7 tertiary institutions to meet to discuss a way forward

DEA – EMIs - brown



Sectors targeted for strategic inspections

- **Ferro Alloy Iron and Steel**
- **Refineries**
- **Cement industry**
- **Paper and Pulp**
- **Hazardous Waste**



Compliance Monitoring

- Detection of non-compliance
- Inspections, review of documents, sampling etc
- Strategic Inspections: Comprehensive baseline assessments involving all three spheres of government + DWA
- 2011 Focus: Priority Areas – Highveld and Vaal
- Highveld – Eskom power stations
- Reactive monitoring in relation to complaints
- SOP – Referrals and Procedure for Responding to Reported Cases



Enforcement



- Strategy – strategic inspections
- Administrative vs criminal enforcement
- APPA – R500 / 6 months
- NEMAQA – R5million / 5 years 1st offence
R10 million / 10 years subsequent offence
- NEMA – Section 24F - R5 million / 10 years
- NEMA – Section 28(14) – R1 million / 1 year
- NEM: WA and ECA offences – waste
- Prosecutors - dedicated

Administrative Actions – Strategic Inspections



- Assmang
- ArcelorMittal – Vereeniging (criminal)
- Highveld Steel (criminal)
- ASA Metals
- Samancor Middelburg (criminal)
- Afrisam Ulco
- Lafarge
- NPC Simuma
- PPC Port Elizabeth
- Pikitup
- Wasteman – N-W Incinerator (criminal)
- Enviroserv – Roodepoort
- PetroSA

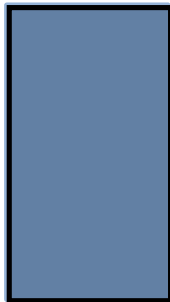


**ArcelorMittal Vereeniging
– result of administrative
enforcement**





BEFORE (March 07)



AFTER (12 JAN 2010) – R200 million



Independent Foundries

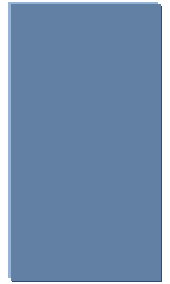
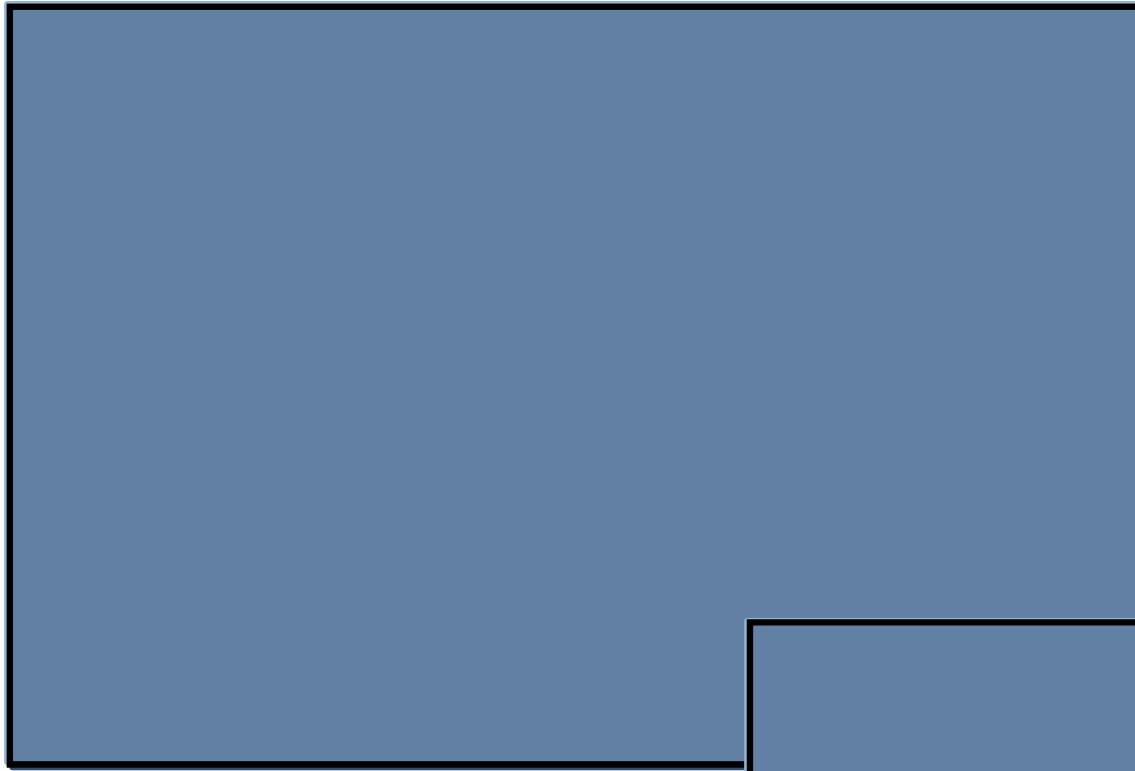


FACILITY CLOSED DOWN



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Blue Sphere

- Plea bargain in June 2006 (EIA and APPA offence)
- New criminal investigation

Blue Sphere



- Ferromanganese melted in a furnace to produce ferro-manganese products
- APPA and ECA
- Plea and sentence - R100 000 or 10 years - R30 000 or 3 years imprisonment suspended on condition:
 - Not contravene ECA
 - Planting of 80 indigenous trees
 - Compliance with section 31A directive

Canaan Fertilizers and Gauteng Asphalt

- Construction of facility for the manufacturing of substance which is controlled by national legislation
- APPA & ECA authorisation
- Plea and sentence agreement
- **R80 000 fine**

Infinitas AC Crematorium- April 2010



- Crematorium – Paarl
- Operation of a scheduled process without a registration certificate
- Contravention of Sec 9(1) **APPA**
- Plea of guilty - R10 000 fine



Bumatech – July 2009

- Metallurgical Slag Processing facility
- APPA, ECA and NEMA authorisations required
- Civil litigation – tested enforcement process
- Settlement agreement – implement certain measures and submit application for all permits
- Criminal case:
 - Trial set for July 2009
 - No consultation with EMI
 - Prosecutor dropped two charges (NEMA and APPA) and allowed him to plead guilty only to ECA – R20 000
- Section 24G fine issued – R750 000 - appeal







Greylingstadt / Boiler Energy – March 2010

- No APPA, Section 20 ECA or EIA NEMA authorisation
- Been in the rendering business
- Heating at low temperatures and dumping waste in veld
- Denied access to premises
- Has now received EIA NEMA authorisation through section 24G process (R19 300) and APPA certificate
- Has removed waste from veld
- Criminal case:
 - CC – R1 million suspended on condition that it does not contravene NEMA, APPA, NEMQA, NEMWA, OHSA and rehabilitates the site
 - Owner – 5 years imprisonment suspended same condition

Factors in sentencing



- Nature of offence
 - Undermines legislation / environmental right / sustainable development
 - Industrial facility in rural area / odour / pests
- Maximum penalty
 - R5 million for NEMA offence - signal
 - Recognition of seriousness of environmental crime
- Prevalence of crime
 - Out of control – cheaper and easier to commence without authorisations / rectify through s24G
- Harmfulness of crime

Factors in sentencing

- State of mind / motivation for offence
 - Been in the business / public outcry
 - Unfair and unethical / avoidance of costs
- Prior conduct / responses
 - Failed to comply with provincial officials
 - Refused entry to property
 - Ignored compliance notice / ceased only when summons served
- Guilty plea
 - Very late
- Fine s24G R19300
- Granted permits 2010

PERMITTED MEDICAL WASTE INCINERATOR



Aid Safe – September 2010



- Medical waste incinerator
- Permits in place but non-compliance with conditions
- Not prosecute in terms of APPA
- Notice to shut down and suspend permit
- Criminal case:
 - Plead guilty
 - Company – R2 million (R1 million suspended for 5 years)
 - deferred fine
 - One manager – R100 000 for illegal dumping
- Clean up of associated illegal dumping and storage
 - R5.5 million
- Re-build and upgrade of incinerator – R17 million
- Proof of performance (ROD suspended)

Creative Drums – February 2011

Drum Factory – July 2011



- Illegal incineration of drums - recycling
 - 3 years imprisonment or R100 000, wholly suspended for 5 years on condition that no further contraventions
 - 3 years correctional service – house arrest and 16 hours per month of community service
-
- Illegal incineration of drums - recycling
 - Circumstances of accused – NB
 - R5 000 or 6 months - APPA
 - R5 000 or 2 years - NEMWA

Silicon Smelters – Rand Carbide

August 2011

- No registration certificates – old APPA certificates of Highveld Steel & Vanadium Corporation Ltd
- Even if applicable – serious non-compliance
- Environmental harm caused by fugitive emissions
- Contravention of Section 51(a), read with section 22 NEMAQA
- Contravention of Section 28(14) of NEMA
- Fine of **R2 million**, half suspended on certain conditions – NEMAQA
- Fine of **R1 million**, half suspended on certain conditions NEMA
- **R13 million** – spent in responses to administrative enforcement notice







Questions

