



STING IN THE SCORPION'S TAIL

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There is an old native American adage which says it is only once the last tree is destroyed, the last fish consumed, and the last stream polluted, that those obsessed with money will realise that their fortune can not be eaten. It is a sentiment that often rings true in South Africa in the face of environmental protection protocols that at times appear to be inadequate at curbing the swelling tide of pollution. A group called the Green Scorpions is charged with the responsibility of monitoring and policing big corporates and their environmentally hazardous waste. We take a look at what this specialist unit has been up to over the last few years.

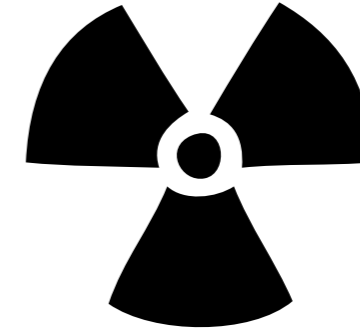
Green Scorpions is the name given to over 600 environmental management inspectors in South Africa. Its mandate is to enforce environmental law and to investigate and hold those who fail to comply with it accountable. The key areas that they are meant to enforce include pollution, waste, protected regions and biodiversity. They are also responsible for conducting marine and environmental impact assessments.

In terms of legislation, the mandate of the Green Scorpions is to enforce the National Environmental Management Act (NEMA), along with its stipulated regulations like the Protected Areas Act, the Air Quality Act and the Biodiversity Act. Appointments to the Green Scorpions are limited to individuals who are employed by the Department of Environmental Affairs and Tourism (DEAT), provincial environment departments, municipal governments, or quasi-government organisations such as Sanbi and Sanparks.

FIGHTING THE GOOD FIGHT

"The Environmental Management Inspectorate (popularly referred to as the Green Scorpions) is not defunct. The EMI continues to monitor compliance with and enforce the specific environmental legislation it has been mandated to enforce in the designations by the Minister or relevant MEC," says Albi Modise, chief director of Communications for the Department of Environmental Affairs.

In response to a question about whether or not the Green Scorpions have been provided with the resources and authority necessary to effectively carry out its mandate, Modise went on to say, "The EMI network has experienced its own set of challenges in the past five years. Insufficient funding, capacity and resource constraints are some of the most serious challenges. The EMI also competes with the private sector for competent and dedicated staff. Managing the EMI across



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the different institutions, while trying to ensure a national profile, has its own tribulations."

As it relates to the policing of large South African businesses and their environmentally hazardous waste, Modise says, "Depending on the nature of the waste according to the waste classification document, the EMIs within the national department would essentially be responsible for regulating industries that generate hazardous waste. Those industries which generate, store or use general waste, are regulated by the EMIs within the provincial environmental departments."

In a media statement for the Environmental Compliance and Enforcement Lekgotla held in March this year, Modise said that since the last Lekgotla, which took place in February 2009, some important initiatives have been undertaken to support the work of the Green Scorpions. These initiatives were aimed at developing a framework within which the Green Scorpions and other key role-players could operate,

and include the publication of an EMI Operating Manual; production of a Magistrates' Bench book to provide guidance to judicial officers in dealing with environmental cases; update of the Prosecutor's Guidelines; specialised EMI courses on priority compliance and enforcement topics have been conducted; and 559 learners underwent basic training through various institutions that were responsible for training of EMIs.

Perhaps one of the most significant areas of progress recorded was with regard to the effecting of legislative amendments that strengthened the powers of the Green Scorpions and also increased penalties. For example, there are now maximum fines of R5 million and R10 million depending on the offences that have been committed. In the Silicon Smelters case in Witbank, a fine of R3 million was issued in August 2011 and the facility spent R13 million on improvements to minimise the impact from the site on the community and the environment.



HEALTHCARE RISK WASTE

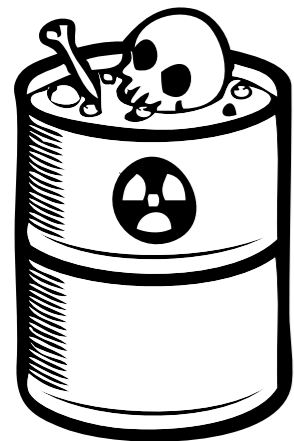
The Green Scorpions have communicated their adoption of a zero-tolerance policy with regard to healthcare risk waste (medical waste) which has led to an integral transition towards compliance among companies in the medical industry. In the aforementioned media statement, Albi Modise says, "The most important criminal case in relation to healthcare risk waste is the case of medical waste buried in Welkom, which will probably come before the High Court in Bloemfontein only towards the end of this year. The clean-up operation associated with this waste (which involved the removal of 18 000 tons of waste and soil at a cost of approximately R55 million) was undertaken over a period of 10 months in line with a compliance notice issued by the Green Scorpions."



THE INDUSTRIAL SECTOR

A significant focus has been placed on proactive industrial compliance and enforcement work over the last five years. Included in this effort are the ferro-alloy, iron and steel industry; refineries; cement; paper and pulp; and hazardous waste facilities. During the original inspections, numerous non-compliances were identified and the responsible facilities were confronted with the requirement of correcting inappropriate practices. Over the last 24 months, the Green Scorpions have embarked on many follow-up inspections in an effort to determine if levels of compliance have been raised by the companies in question. In the March 2012 media statement, Modise goes on to say, "The enforcement action taken by the Green Scorpions against ArcelorMittal Vereeniging, which required the implementation of measures to address the significant fugitive emissions, resulted in the commissioning of a secondary extraction system at a cost of R220 million. Assmang Cato Ridge also commissioned its R100 million extraction system in response to enforcement action taken by the Green Scorpions back in 2007."

According to Gail Smit of the Institute of Waste Management of Southern Africa, "The greatest challenges in municipal waste management are financial management, equipment management, labour (staff) management and institutional behaviour (management and planning) - the lack thereof. There is a perception that government monitoring and policing is aimed at large companies while the municipalities get away with 'murder'. Large companies are usually ISO 14000 certified in order to operate in a competitive market. One of the requirements for ISO certification is that a company needs to comply with environmental legislation. There is no similar incentive for municipalities to comply. Cooperative governance is quite often used as a scape goat so as not to take action against non-compliant municipalities. The national waste management strategy lacks practical action plans for implementation. It will help a lot if such action plans could be formulated."



COMPLIANCE ENFORCEMENT STATISTICS

The following figures illustrate the progress made in anti-pollution enforcement over the last four years:

- A total of 9 404 criminal dockets and admission of guilt fines were registered.
- Since 2007–2008, a total of 6 986 arrests were recorded.
- The number of warning letters, pre-directives, pre-compliances, final directives and final notices issued, as well as civil court applications launched, peaked in 2009–2010 with a total number of 385 in 2008–2009 to 1 260 in 2009–2010 followed by a slight decline in 2010–2011 to 729.

It is true that numerous companies in this country make no attempt to manage their toxic waste responsibly unless faced with enforcement action. However, there are encouraging indications that the Green Scorpions are actively addressing this issue; and while the battle is far from over, significant inroads are being made towards securing a cleaner and safer environment for all.

For further information on the work of the EMI in the last two years, read the National Environmental Compliance and Enforcement Reports (NECER) for 2009/2010 and 2010/2011 at http://www.environment.gov.za/sites/default/files/docs/necer2010_11report.pdf and http://www.environment.gov.za/sites/default/files/docs/necer2009_10report.pdf

Background information on the EMI is available at <http://emi.deat.gov.za/>

The Waste Classification document can be viewed at www.sawic.co.za