

STEPPING UP ENFORCEMENT



AGAINST ENVIRONMENTAL CRIME



**environment
& tourism**

Department:
Environmental Affairs and Tourism
REPUBLIC OF SOUTH AFRICA

ENVIRONMENTAL
MANAGEMENT
INSPECTORATE



ENVIRONMENTAL CRIME:

WHAT IS IT?

WHY DO WE NEED TO KNOW ABOUT IT?

WHERE DO I REPORT IT?

WHO INVESTIGATES IT?



TABLE OF CONTENTS

WHAT IS ENVIRONMENTAL CRIME? _____	2
WHY IS IT IMPORTANT TO PROSECUTE ENVIRONMENTAL CRIMINALS? _____	2
WHAT IS THERE TO PROTECT? _____	3
WHO COMMITS ENVIRONMENTAL CRIMES? _____	4
HOW WILL I RECOGNISE AN ENVIRONMENTAL CRIME? _____	4
CONSEQUENCES OF CONVICTION FOR ENVIRONMENTAL CRIMES _____	7
WHO INVESTIGATES ENVIRONMENTAL CRIME? _____	8
WHAT CAN I DO TO HELP STOP ENVIRONMENTAL CRIME? _____	8



Do you have clean water to drink? Do you have fresh air to breathe? Can you find and afford healthy food? Do your children have safe spaces in which to play? Can you and your family enjoy time in wilderness areas or parks?

If the answer to any of these questions is NO, it could be as a result of ENVIRONMENTAL CRIME.

1 WHAT IS ENVIRONMENTAL CRIME?

Our health and well-being depends on our environment. That is why protecting the environment is not just about saving animals and plants: it is also about protecting people's lives and livelihoods.

In South Africa, we have a number of laws which protect us and our environment by making it a crime to do things which harm the environment. So an environmental crime, which involves causing harm to the environment, is just like any other crime. By harming the environment, the environmental criminal can harm or even kill the people, plants and animals who depend on the environment to survive.

Examples of environmental crime include illegal dumping of hazardous waste, illegal deep-sea fishing, smuggling of ivory, and illegal property developments.

The Constitution guarantees every person the right to an environment that is not **harmful to their health and well-being**. It also says that government must act reasonably in order to protect the environment by preventing pollution, promoting conservation and sustainable development, while building the economy and society.

2 WHY IS IT IMPORTANT TO PROSECUTE ENVIRONMENTAL CRIMINALS?

Why should our government spend valuable resources on catching and prosecuting environmental criminals?

Environmental crime has **serious social and economic impacts on the daily lives of our people**. For example, the pollution of groundwater can cause cancer in adults and children, while illegal fishing can cause the stock of a particular fish species to fall, resulting in job losses for honest fishers.

"It might appear irreverent to speak of the Maluti mountains and the rolling bushveld when blood is being spilt in our roadways; it would seem inappropriate to lament chimney smoke pollution when the air is thick with teargas. People who have washing machines have no right to condemn others who dirty streams with their laundry..."

(Albie Sachs, "Conservation and Third Generation Rights: the Right to Beauty" ch 10, 139-140 in Protecting Human Rights in a New South Africa 1990.)

Environmental crime can:

- ▶ harm our health and the health of our children by causing or contributing to diseases like cancer and asthma
- ▶ destroy our natural resources, habitats and biodiversity by killing or wiping out wilderness areas and rare species
- ▶ compromises our natural heritage, and the ecological integrity of the planet
- ▶ contribute to general criminal activity, and all its negative social consequences.

The health effects of air pollution:

Air pollution is the contamination of the air by harmful gasses and particulates (dust) at concentrations that are higher than natural background levels. Different groups of individuals are affected by air pollution in different ways depending on their level of sensitivity. Continual exposure to air pollution affects the lungs of growing children and may aggravate or complicate medical conditions in the elderly.

(DEAT, Publications Series B: Book 5: Impacts of Air Pollution, 1)

3 WHAT IS THERE TO PROTECT?

The environment extends from our everyday surroundings to our whole beautiful country. South Africa's rivers and wetlands, its mountains and plains, its estuaries and oceans, its magnificent coastline and landscapes all contain an exceptionally rich and varied array of life forms. In fact, our country ranks as the **third most biologically diverse country in the world** and is the only country to have an entire plant kingdom within its national boundaries.

In terms of the number of mammal, bird, reptile and amphibian species which occur only in this country, South Africa is the 24th richest country in the world, and the 5th richest in Africa. Being bordered by three water masses (the cold Benguela current, the warm Agulhas current, and oceanic water) makes our seas some of the most diverse in the world.



"Each one of us is intimately attached to the soil of this beautiful country. Each time one of us touches the soil of this land, we feel a sense of personal renewal."

- Former President Nelson Mandela, Inauguration Speech, 1994.

4 WHO COMMITS ENVIRONMENTAL CRIMES?

Environmental crimes are usually the result of calculated business decisions either **to make money or save money**. A very small proportion of environmental crimes are committed out of desperation or need. The greed of environmental criminals is encouraged by a perception that **abusing or harming the environment does not matter**.

Offenders are often middle-class and educated. Their crimes are viewed as "white collar" and therefore not important or life-threatening. However, not only are these crimes sometimes life-threatening, they also cost our country billions of rand each year.

A US government study concluded that environmental crime syndicates make between \$22-31 billion US per year from their illegal activities.

(US Government Working Group International Crime Threat assessment, 2000
- www.fas.org/irp/threat/pub4527chap2.html)

5 HOW WILL I RECOGNISE AN ENVIRONMENTAL CRIME?

Not all activities that impact on the environment are criminal. However, if the activity has or may have a **significant negative effect on human health or wellbeing** or on **natural or managed ecosystems**, it could be an environmental crime.

Environmental legislation contains a number of provisions that make it a crime to engage in certain types of behaviour, and sets out penalties for such contravention. The table below sets out just a few examples of criminal offences in terms of national environmental legislation. Contraventions of provincial and municipal legislation can also be environmental crimes.

CRIME	LAW	PENALTY
 <p>Operating a waste disposal site without a permit</p>	Section 20 of the Environment Conservation Act, 1989	R200 000* and/or imprisonment of 10 years; and additional fine not exceeding three times the commercial value of anything in respect of which the offence was committed
 <p>Emitting an offensive odour from an activity or premises</p>	Section 51(1)(a) of the National Environmental Management: Air Quality Act, 2004	R200 000* and/or imprisonment of 10 years
<p>IMAGE</p> <p>Commencement of a property development without an environmental authorization</p>	Section 24 of the National Environmental Management Act, 1998	R5million and/or 10 years imprisonment



CRIME	LAW	PENALTY
 Hunting or gathering a listed threatened or protected species without a permit	Section 57 of the National Environmental Management: Biodiversity Act, 2004	R100 000* or three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater and/or imprisonment of 5 years
 Mining in a protected area	Section 48 of the National Environmental Management: Protected Areas Act, 2003	R100 000* and/or imprisonment of 5 years
 Fishing of certain species without a permit	Section 13 of the Marine Living Resources Act, 1998	R2 million or imprisonment of 5 years
 Driving on the beach without a permit	Section 3 of Regulations in terms of the National Environmental Management Act, 1998: Control of Vehicles in the Coastal Zone	Fine of between R2000 - R10 000; and/or imprisonment of between 6 months and 2 years.

6 CONSEQUENCES OF CONVICTION FOR ENVIRONMENTAL CRIMES

- ▶ In addition to **jail terms and fines**, conviction of an environmental crime may result in a **civil judgement** against the offender for:
 - any loss or damage caused, including the cost of rehabilitation of the environment;
 - the money made by the offender through the environmental crime committed
 - the cost of investigation and prosecution
- ▶ **Employers** whose employees commit environmental crimes, and directors of companies that commit environmental crimes, can also be criminally charged for the crime.
- ▶ **Cancellation of and disqualification for permits:** A person who has been convicted of an environmental crime may have his/her permit withdrawn, and be disqualified for up to five years from getting another permit.
- ▶ **Forfeiture of items used to commit environmental crimes:** Any item, including vehicles, boats and aircraft, used to commit an environmental crime may be forfeited to the State.

Did you know?

If you assist in bringing an environmental criminal to justice, a court imposing a fine for an environmental crime may order that an amount of up to a quarter of the fine has to be paid to the person whose evidence led to the conviction.

(Section 34B of the National Environmental Management Act, 1998)

(* Maximum penalties calculated according to the Adjustment of Fines Act, 1991)





7 WHO INVESTIGATES ENVIRONMENTAL CRIME?

You may have heard of the “Green Scorpions” in the news. These are, in fact, **Environmental Management Inspectors (EMIs)** - officials from various national, provincial and municipal government departments designated by the Minister or MEC to monitor compliance with and enforce national environmental legislation.

The National Environmental Management Act, 107 of 1998 (NEMA) confers a wide range of powers on EMIs to **investigate environmental crimes**, including the questioning of witnesses, the copying of documents and the taking of photographs and audiovisual recordings. In certain circumstances, EMIs may even conduct search and seizure operations and arrest an environmental criminal. However, not all EMIs are criminal investigators; some are empowered to conduct routine **inspections**, while others undertake **administrative** enforcement i.e. the issuing of notices and directives.

How will I recognize an EMI?



EMIs can be identified by the **EMI logo**, which has been designed to represent a shield of protection and enforcement, and the three key areas of enforcement - marine and coastal enforcement (the “blue” issues), biodiversity and conservation enforcement (the “green” issues), and urban development, pollution and waste enforcement (the “brown” issues). EMIs are also issued with standard EMI identity card.

This national network of EMIs will break through the traditional separation between the **protection of different aspects of the environment**, and will include park rangers and conservation officers, air quality officers, marine and coastal enforcement officers, pollution and waste enforcement officials and officials monitoring urban developments. These EMIs will work hand in hand with members of the **South African Police Service** and the **National Prosecuting Authority** to ensure that environmental criminals are brought to book.

8 WHAT CAN I DO TO HELP STOP ENVIRONMENTAL CRIME?

Here are a few things that you can do to assist:

- ▶ **Familiarise** yourself with your environmental rights and responsibilities;
- ▶ Tell your **friends and family** about environmental crime and why it should be stopped;
- ▶ If you suspect that an environmental crime is taking place, **report it to relevant authorities** (such as the relevant national, provincial or local government department, the South African Police Service or call the **Environmental Crimes and Incidents Hotline on 0800 205 205**);
- ▶ Be proactive and **become an Environmental Management Inspector**

How do I become an Environmental Management Inspector?

If you want to become an Environmental Management Inspector, you must complete an approved, tough, 6-month training course. Certain tertiary educational institutions, such as the University of Pretoria and UNISA, now incorporate the approved EMI training course as part of their curricula. You can now enroll for this course (either as a stand alone certificate, or part of a formal qualification) and then apply for compliance and enforcement positions at any of the institutions belonging to the EMI network.



This brochure was published with the support of the British High Commission
and the Environment Agency of England Wales



BRITISH HIGH COMMISSION