



THE 'GREEN SCORPIONS': WHO ARE THEY AND WHAT DO THEY DO?

We have all heard of the colloquial term for the law enforcement agents known as the 'Green Scorpions' but many of us are unsure of who these agents are and what functions they serve. More formally known as Environmental Management Inspectors (EMI's) in terms of the National Environmental Management Act, Number 107 of 1998 ("NEMA"), EMI's are mandated under Section 31D of NEMA. The Green Scorpions are a network of environmental compliance and enforcement officials from national, provincial and municipal government who all share the same legislative powers and duties in terms of NEMA.¹

FUNCTIONS OF THE GREEN SCORPIONS

The recent resurgence of prosecutions for environmental wrongs and the issuing of directives (compliance with a duty of care) has become a lot more prevalent. The Green Scorpions, within their mandate in terms of NEMA, must monitor and enforce compliance with our environmental laws for which they have been designated and may investigate an act or omission in which there is a reasonable suspicion that the act or omission might constitute an offence in terms of such law; a breach of such law; or a breach of a term or condition of a permit, authorisation or other instrument issued in terms of such law.²

¹ Department of Environmental Affairs launches the National Environmental Compliance and Enforcement report 2012/2013 (2013) accessed on 24 April 2015 at https://www.environment.gov.za/mediarelease/necer_201213report

² Section 31G(1)(a) & (b) of NEMA.

The Green Scorpions must carry out their duties and exercise their powers in accordance with any instructions issued by the Minister or the MEC and subject to any limitations and in accordance with any procedures that may be prescribed.³ Their ultimate function is to ensure environmental laws are being complied with and that there is no damage to, loss of, or deterioration of the environment.

WHY DO WE NEED THEM?

Section 24 of our Constitution would be rendered impotent without enforcement.

Section 24 provides that:

Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and*
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*
 - (i) prevent pollution and ecological degradation;*
 - (ii) promote conservation; and*
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

Section 1 of NEMA widely defines “environment” to mean:

the surroundings within which humans exist and that are made up of-

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;

³ S 31G(2).

- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

POWERS OF THE GREEN SCORPIONS

Green Scorpions have the power to investigate, inspect, enforce and administrate.⁴ Should the Green Scorpions reasonably suspect some form of non-compliance or breach of any law they may question a person about this act or omission.⁵ In the event that the person refuses to answer any question they may issue a written notice requiring the person to answer these questions. They may also inspect or question a person regarding any book, document, record or any written or electronic information which may be relevant to the Green Scorpions suspicion. Another function of the Green Scorpions is to inspect, question a person about, and if necessary remove any specimen, article, substance or item which may have been used whilst committing an offence, breaching a law or breaching any permit issued in terms of such law.

NEMA sets out further powers of the Green Scorpions, namely the power to seize items; stop, enter and search vehicles, vessels and aircrafts; conduct routine inspections and issue compliance notices, to name but a few.⁶ The Green Scorpions are not empowered to prosecute cases in Court as this falls within the ambit of the National Prosecuting Authority, however their functions may go a long way in assisting such prosecutions that are pursued. Further the South African Police Force remains involved in the investigation and enforcement of environmental laws despite the existence of the Green Scorpions. It is envisaged that all these parties co-operate and work together in enforcing our environmental laws.

⁴ C Tucker & W Mandlana "Green Scorpions – Environmental Management Inspectorate"
http://www.enviropaedia.com/topic/default.php?topic_id=127

⁵ S 31H(1)(a).

⁶ Sections 31I, 31J, 31K and 31L of NEMA.

EFFECTIVENESS OF THE GREEN SCORPIONS

Each year The Department for Environmental Affairs publishes a National Environmental Compliance and Enforcement Report highlighting what was achieved by the EMI's in that year. These statistics are from the report for the years 2013/2014. With regard to criminal enforcement the total number of arrests made by the Green Scorpions was 1371, the total number of criminal dockets registered was 1861, the number of cases handed to the NPA was 378 and the total value of fines paid was R498 230.00. For civil actions and administrative enforcements, the number of directives issued was 60, the number of compliance notices issued was 154 and the total value of administrative fines paid was R12 517 026.00.

THE BALANCING ACT

One cannot overlook the importance of the Green Scorpions in the enforcement of our environmental legislation. They play a crucial role in enhancing every citizen's constitutional right to an environment that is preserved for present and future generations. However economic and social development remains of vital importance in terms of our environmental legislation and for the development and success of our economy. Our Courts have recognised that socio-economic rights, addressing unemployment and developing our economy are vital to the enjoyment of other human rights guaranteed in the Constitution. But development cannot subsist upon a deteriorating environmental base. The environment and development are thus inexorably linked.⁷

⁷ *Fuel Retailers Association of SA (Pty) Ltd v Director General, Environmental Management Mpumalanga and Others* CCT 67/06 (2007) ZACC 13

THE RISKS

Some of the risks that businesses face when their activities fall within the ambit of our environmental legislation include:

1. Failure to apply for Environmental Authorisation when required. Ignorance in this regard is not a defence. It is sometimes possible to rectify such failure after the fact with the application of the controversial provisions in section 24G of NEMA;
2. Applications for Environmental Authorisation that are incomplete or incorrect with regard to the activities to be undertaken or failure to make application for amendments or additional authorisation when activities change; or
3. No compliance with conditions that are imposed in the Environmental Authorisation granted.

We hope the above is of interest to you. Should you require legal advice on environmental law please do not hesitate to contact us on 011 788-0083 or email enquiries@bkm.co.za.

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