

COMPLIANCE MONITORING AND ENFORCEMENT

Integrated Approach Towards a Complied Society

Portfolio Committee Water Affairs
Forestry
24 October 2007



water & forestry

Department:
Water Affairs and Forestry
REPUBLIC OF SOUTH AFRICA





LEGISLATIVE FRAMEWORK

- THE CONSTITUTION

- Section 24 guarantees everyone

- the right to an environment that is not harmful to their health and well being; and
 - to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
 - Prevent pollution and ecological degradation;
 - Promote conservation and



LEGISLATIVE FRAMEWORK

- Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
- Section 27 guarantees everyone
 - the right of access to sufficient food and water
 - The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right



LEGISLATIVE FRAMEWORK

- THE NATIONAL WATER ACT, 1998
- PROTECTION OF WATER RESOURCES
 - Chapter 3 of the Act deals with the protection of water resources
 - It sets out steps towards the protection of water resources-
 - Prescription of classification system
 - Determination of class of water resources and resources quality objectives
 - Determination of the Reserve



- Section 19 deals with the prevention and remedying of pollution
- Section 20 deals with the control of emergency incidents
- Section 118 requires an owner of a dam with safety risk to register that dam.



- Section 29 allows that conditions be attached to general authorisations or licenses relating to the protection of a water resource.



WHAT IS ILLEGAL WATER USE

- Use of water without a license, a general authorisation and not as part of an existing lawful water use.
- Non compliance with conditions attached to the use of water (eg. abstracting more than is allowed or not paying water use charges)



Powers of the Minister to deal with illegal water use

- Subject to a directives being issued to an illegal water use to rectify the non compliance-
 - Carry out the necessary measures to rectify the non compliance (e.g break a dam, seal water pipes)
 - Suspend any entitlement to use water;
 - Withdraw such an entitlement
- Lay criminal charges
- Approach the Court for appropriate relief



**NB: CME's ROLE IS NOT TO POLITICISE
THE NWA/WSA & FORESTRY SECTOR,
BUT TO ENSURE COMPLIANCE AND
TO MONITOR WATER USE
ACTIVITIES, BUT ACT AND ENFORCE
WHEN THERE IS NON-COMPLIANCE**

A ZERO TOLERANCE APPROACH !!!!



‘The Ethiopians hold it for a fact that Egypt is “trying to monopolise” the Nile and cite the Aswan Dam, the Tochkan canal, and the Peace canal, of how Egypt step-by-step claims a larger amount of the Nile water; claims that may be used as evidence of an “acquired right” in future negotiations. This is the classic upstream-downstream dilemma, unsatisfactory managed by international law, which has given rise to fears of water wars’ (Ohlsson & Lundqvist 2000)

BUT THAT IS NOT GOING TO HAPPEN IN SOUTH AFRICA!!!!!!!!!!!!



A REMINDER !!!!!

- Before NWA, water use was based on riparian rights through permits and/or water rights
- Post NWA, new era of water use AUTHORISATIONS
- Significant increase in unlawful water use has been observed
- Verification of existing lawful use is presently slowing down practical implementation of compulsory licensing
- Identification and successful prosecution of transgressors are difficult under current strategies and mechanisms
- One of the Department's salient key focus areas is to ensure the protection of water resources – underpins need for dedicated Compliance and Enforcement Unit



What is a Regulator ?

- State Institutions in Chapter 9 of the Constitution for Guidance on a definition. The interpretation from S181 of that chapter would be something like the following:
- The water sector regulator is that independent and impartial entity whose mandate it is to protect the consumer of water services without fear, favour or prejudice.
- The functions of the regulator are to:
 - - ensure full compliance with legislation, regulations, standards and policies; and
 - - in the context of the monopolistic nature of water supply, to moderate the price at which water is supplied.
- No person or organ of state may interfere with the functioning of these institutions
- The water regulator is only accountable to the General Assembly and must report on its activities and the performance of its functions to the Assembly at least once a year.



What is Compliance?

Compliance:

Compliance is full implementation of environmental requirements. Compliance occurs when requirements are met and desired changes are achieved, eg processes or raw materials are changed, work practices are changed so that for example hazardous waste marketed, etc. The design of requirements affects the success of an environmental management programme. **If requirements are well designed, then compliance will achieve desired environmental result. If requirements are poorly designed, then achieving compliance and/or the desired result likely to be difficult.** Water Compliance are:

- *Requirements are met*
- *Desired behaviour achieved*
- *Compliance only a concern where there are enforceable requirements*



What is Enforcement?

Enforcement is the set of actions that government take to achieve compliance within the regulated community and to regulate and to correct or halt situation that endanger the environment and public health.

Enforcement by government includes:

- *Inspections* to determine the compliance status of the regulated community and detect violations
- *Negotiations* with individuals or representatives of an organisation who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance
- *Legal action* where necessary to compel compliance and to impose some consequences for violating the law or posing a threat to public health and the environment



There are several reasons why concerns about the extent of compliance and the effectiveness of enforcement efforts are important (after, ASSOCIATION OF ENVIRONMENTAL AND RESOURCE ECONOMISTS 1987):

- **Effectiveness:** Compliance is critical to realizing the benefits envisioned by policy, statutes, regulations, standards, and permits. The vast regulatory apparatus that are put in place to ensure sustainable water resources amounts to empty words and deeds without compliance. It is the regulatory bottom line.
- **Efficiency:** Environmental economics, among other things, seeks to identify the most efficient solution to achieving desired public health and welfare benefits. If regulations and permit conditions are designed to be economically efficient, inconsistent enforcement will lead to economically inefficient results.



- **Equity:** A consistent enforcement response provides an element of fairness to the regulatory process that would be missing if those who failed to comply benefit relative to those who do, or if regulatees are treated very differently depending upon their location and circumstance.
- **Credibility:** The rule of law and the credibility of our governmental institutions require that laws that are put in force are taken seriously. The expectation that violations will generate a predictable and proportionate enforcement response is essential to the credibility of our regulations. Support for escalating enforcement response to known violations, and following through from the less costly to the more resource intensive enforcement responses until compliance is achieved is the ultimate test of the public will to see a program through to its full implementation.



Remember...

- Enforcement is a tool to achieve compliance:
- Enforcement = Actions government takes to compel or encourage compliance
- Enforcement is not an end, but the means to an end
- Enforcement can be used at **DETERRENCE**:
- Creation of a atmosphere where people chose to comply rather that to violate.
 - Credible likelihood that a violation will be detected
 - Swift and certain response to violation
 - Consequence: sanction or penalty
 - Continuation of processes (follow –up’s)

There is perception that the first four will happen if a violation occurs

What is this Action Plan ?

- **Problem statement:** DWAF is not dealing fast enough in dealing decisively with identified unlawful water use, which leads to negative social, environmental and economic impact.
- **Purpose:** Is to assist RO in identifying their roles and responsibilities and the resources (technical, financial, human) necessary. It also suggests ways for RO to build Management Capacity through a Capacity Building programme for the stakeholders
- The **Focus** is to deal with the following in terms of the NWA and WSA, other related legislation





CME

Regional

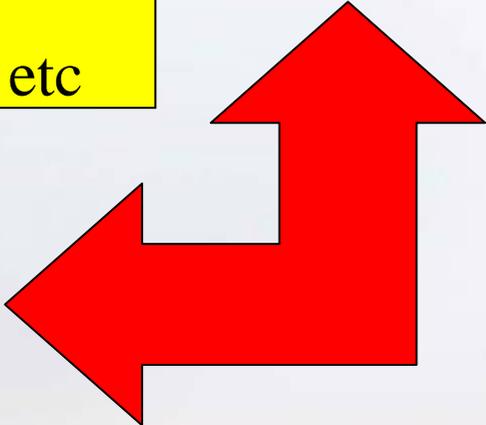


Efficiency

Sustainability
Equity
Conserve
Quality
Quantity, etc

- S (35)
- S (29) – GA's
- S (40) – Licenses
- S (19)
- S (20)
- S (21) (a-k)
- S (22)
- S (53, 54,55,59)

STAKEHOLDERS
 LAWSI
 AGRI
 IMP
 END USER



WE ALL WANT TO ACHIEVE THIS



CME



CARROT

STICK

IMP

LAWSI



WUA

AGRI

**ENVIRONMENTAL
ENFORCEMENT
AGENCIES**

Policy
Strategies
Tools & Guidelines
Regulations
Case studies etc

DEBT

EQUITY



**WAR/W4GD
SOCIETY**

EVALUATION

AWARENESS

PLANNING

IMPLEMENTATION



GOAL SETTING	SELECTION MANAGEMENT APPROACH(ES)
<i>For example:</i>	
Reduce Risk	Command and control
Improve & maintain Environmental Quality	Economic/ market-based
Prevent Pollution	Risk based
Sustain Social, Economic and Environmental Uses	Pollution Prevention
Prevent Deforestation	↓
Control and enforce Unlawful water use	Regulatory Voluntary Liability

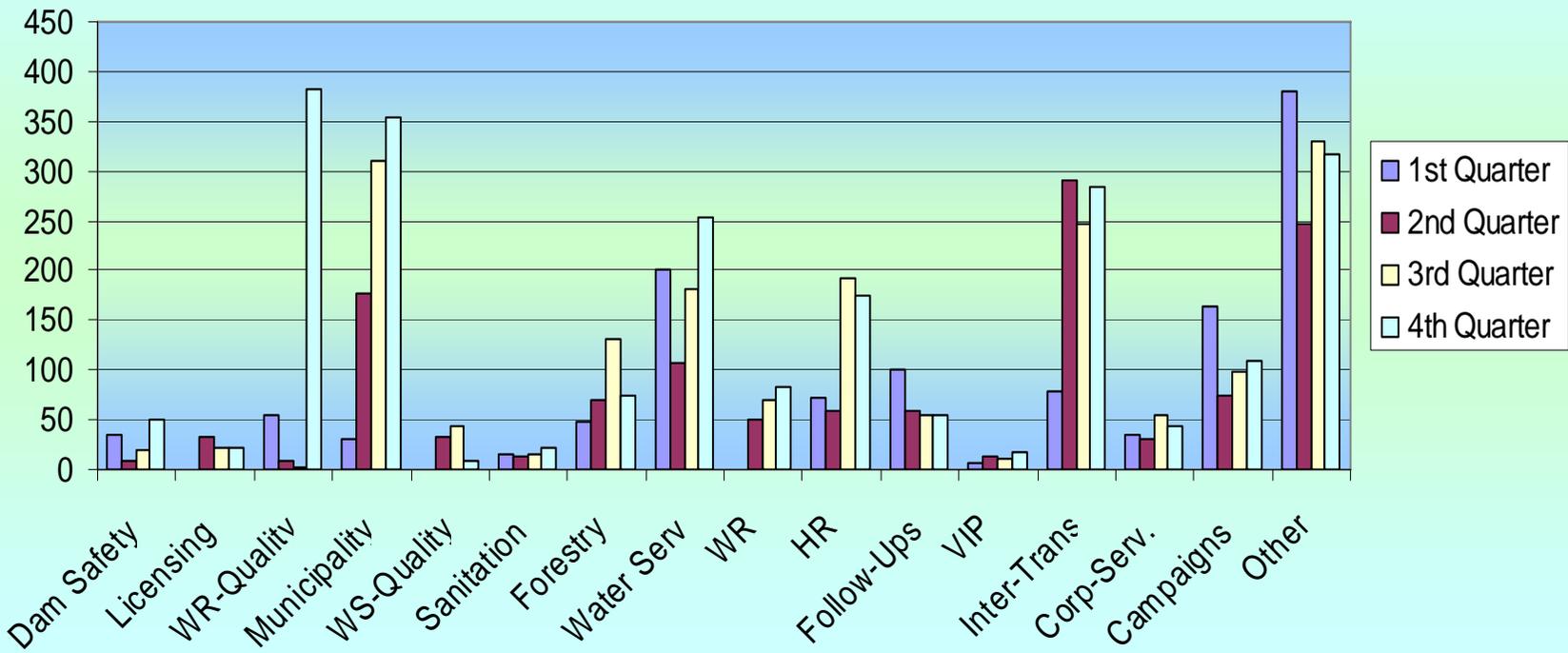
DEVELOPMENT OF LEGAL BASIS/ REQUIREMENTS	DEVELOPMENT AND IMPLEMENTATION OF STRATEGY/PROGRAM
<i>For example</i> Legislation Regulation Licenses Court Cases/Precedents Programs	-Compliance Monitoring and Enforcement Strategy/Program -Ensuring Enforceable Requirements -Priority setting -Compliance promotion -Enforcement responses -Roles and responsibilities -Evaluation Measures -Accountability Systems

RESULTS
<i>For example:</i> -Compliance -Environmental, Social and Economical improvements -Reduced waste and pollution



Call Types

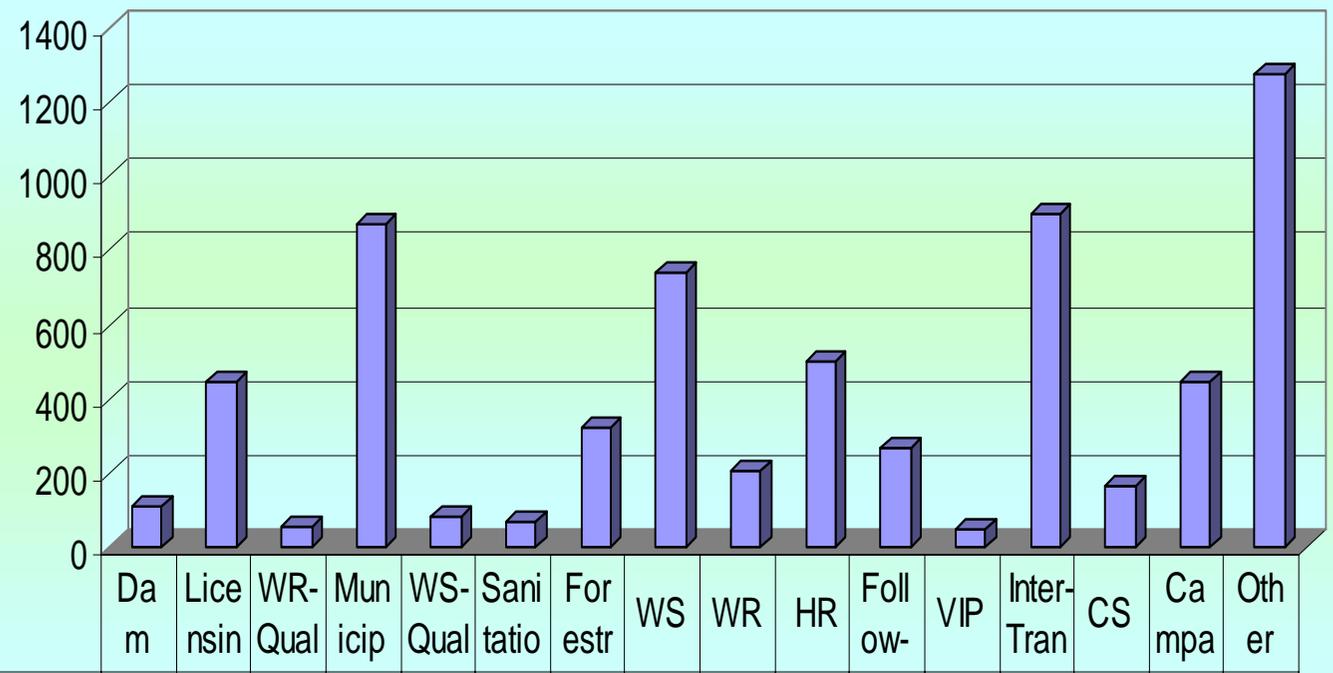
Call Types for 2006-7





Call Types

Call Types 2006-7



■ Year 2006-7	113	449	55	871	84	66	322	743	204	498	269	50	899	163	445	1274
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Recent Lessons

Free State Region:

- Admission of guilt fine R1000,00 paid by Sungliole Enterprise for cutting protected trees
- Kalahari golf –written warning – damaging protected trees
- Verbal warnings issued against various garages and companies for selling protected trees
- 18 cases under investigation and numerous unlawful water uses prevented and stopped
- Challenges: Co-operative Governance Act (excellent relationship with LG), staff shortages, Legal support
- 2 municipalities being investigated by SAPS for pollution incidents and cases forwarded to DPP for prosecution
- DPP appointed dedicated Advocate to deal with water related crimes



Gauteng:

- **Section 19 – 15 cases per month**
- **Section 20 – 10 cases per month, mainly trucks over turning**
- **Section 21(a)(b) – 155 cases**
- **Section 53 – 57 cases**
- **Vaal river PSC established**

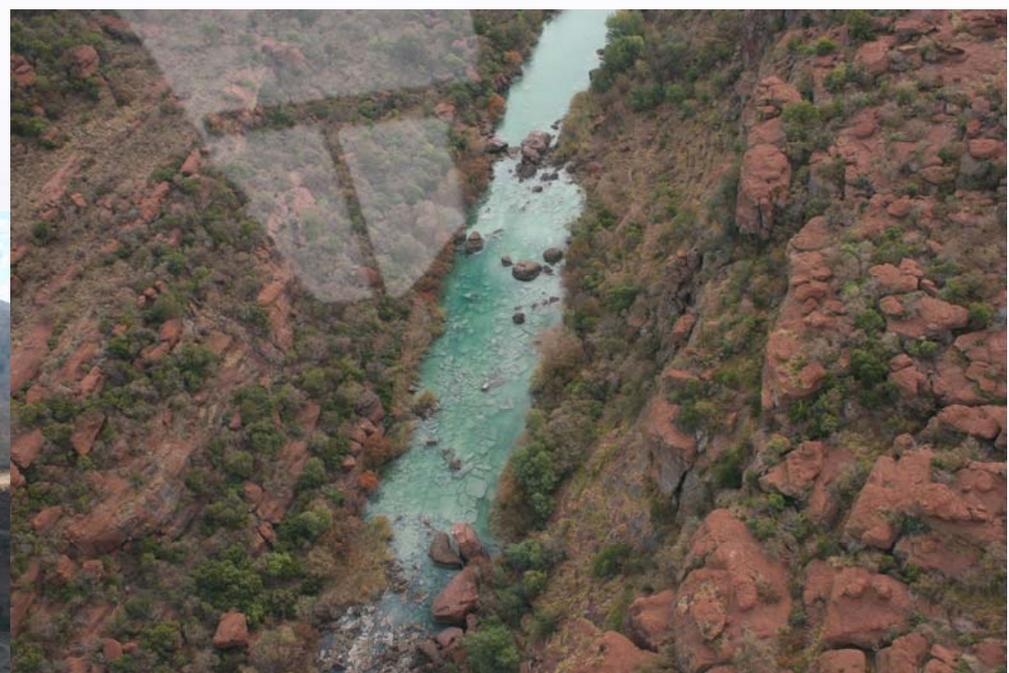


- **KWAZULU NATAL**
- Pongola – Impala Water user association users owning the department R57 million, money recovered within 3 months





Water Quality





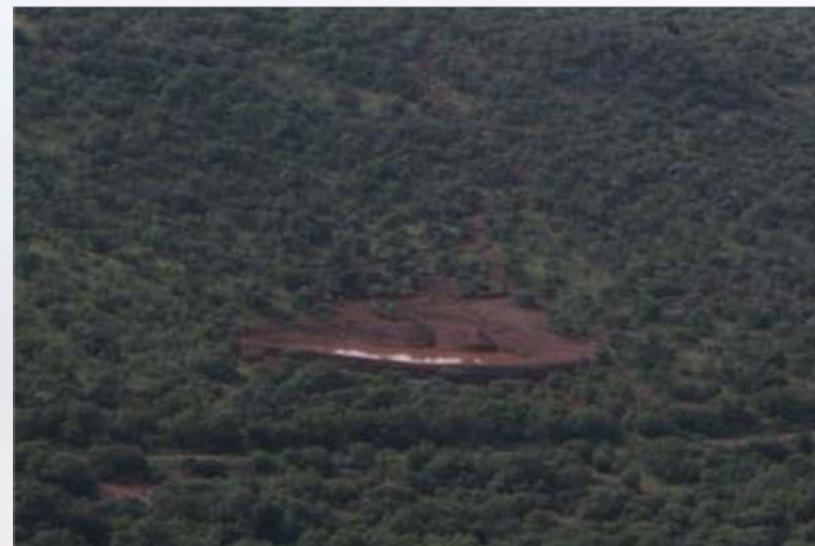








The Eye in the Sky







Regional Co-ordinators

- Western Cape: R Khan,
- Northern Cape: Gawie Van Dyk
- Free State: Mr Ntili
- Eastern Cape: Mr Keke
- Mpumalanga: J van Aswegen
- North West: R Botha
- Gauteng: W van der Westhuizen
- Limpopo: Mr Matukane
- KwaZulu Natal: J Perkins

EVALUATION

AWARENESS

PLANNING

IMPLEMENTATION



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Reality Check





Risk assessment/ Challenges

- Dedicated human resources – Legal specialist, investigators, technical and admin support – National & Regional
- Other Government Departments – **Co-operative Gov act**
- Funding – Works can not be budgeted
- Verification/Validation & Reserve Determination not implemented in all areas
- **Old Act vs New Act & HOW DOES IT LINK UP WITH OTHER LEGISLATION ?**
- The Judiciary system understanding of the NWA and WSA
- Restructuring
- Conflict Management – Post Trauma Stress

- **BUT CHALLENGES CAN BE OVERCOME WITH COMMON UDERSTANDING !**



Alignment of existing processes

- Currently the Head office team consists of one person and the Regions, staff are seconded into CME positions
- 2 posts had been acquired from Masimambane and in the process of being advertised
- Currently the unit as part of integration work very closely with other units within the department and other law enforcement agencies to achieve maximum results
- In the 1st quarter of the 2007/2008 financial year a 7% eradication backlogs of unlawful water use had been achieved, whilst dealing with new cases and rendering support and on site training
- 2 very important project are undergo which is:
 - Eradicating the Backlogs
 - Development of a Training programme



Lets go back to basic's







Alignment of existing processes cont....

- **In order to speed up the process DWAF are in the process of appointing 2 Implementing agents to support, implement, research and development to assist National and Regional offices until restructuring are completed and permanent positions are filled.**
- **In a nut shell the following are envisaged**



Implementing Agent 1

- Provision of project management services required for the effective implementation of Compliance Monitoring and Enforcement (CME) in all regions
- Manage and take rehabilitation action where requested by DWAF to do so for the demolition of unlawful structures. This may include the development of management and rehabilitation plans as well as actions in terms of cost recovery.
- Identify potential vendors for the development of an integrated database. On completion DWAF will be responsible for the maintenance of the database.
- Assist with the training required on the skills development programme and functional training. While the core training material will be developed by the Implementing Agent 1, Implementing Agent 2 will assist in the implementation and presentation of the training material.
- Design education tools and implement an information campaign for external stakeholders.
- Co-ordinate all efforts and support DWAF Head Office and Regions with strategic planning on CME. This will include the development of national, regional and CMA strategies.
- Implement the Action Plan for CME on national level. This may include the inclusion and appointment of industry experts in law, ecology, hydrology, geo-hydrology forensic investigations, communication and engineering to support the efforts of CME.
- Provide equipment and technology that will enable DWAF to implement effective compliance monitoring and enforcement.
- Monitor and report of the project progress on a monthly basis;
- Update the central reporting system on a regular basis;
- Prepare project close out report once completed `



Implementing Agent 2

- Co-ordinate all research required for the effective implementation of Compliance Monitoring and Enforcement (CME) in all regions
- Identify all legislation that may be relevant and highlight the impact or significance in terms of the implementations of CME in the water sector
- Identify other organs of state that may be involved or which can assist DWAF with the role of CME. Through this task, areas of possible duplication also need to be identified.
- Assist with the preparation of procedures and documents required for the effective implementation of CME.
- Conduct a pilot study to evaluate, test and improve the use of the procedures
- Assist with ad-hoc research required to improve CME activities and processes
- Study technology that may be used by officials to assist in CME
- Monitor and report of the project progress on a monthly basis;
- Update the central reporting system on a regular basis;
- Prepare project close out report once completed



Roll out Schedule



Communications strategy →

Implementation

National Strategy

Implementation

Catchment strategy

Capacity Building

Priorization

Database Dev

Maintenance

Compliance Monitoring



Thanks



The Department of Water Affairs , never loses a case, we just learn to improve Compliance and Enforcement...

Some for all, forever, together



Methodology



Enhancing the compliance & enforcement environment

- *Greening the judiciary:* Water crimes are yet to be acknowledged as “crimes.” The task team will speed up awareness within the legal system. The goal is establishment of a dedicated prosecution mechanism with knowledge, expertise and understanding of the NWA, achievable with co-operation from the Department of Justice.
- *Media:* The Task Team will ensure that enforcement actions are well publicized with a view to encouraging increased compliance with the assistance of CD: Communications. & Government Communication & Information Systems



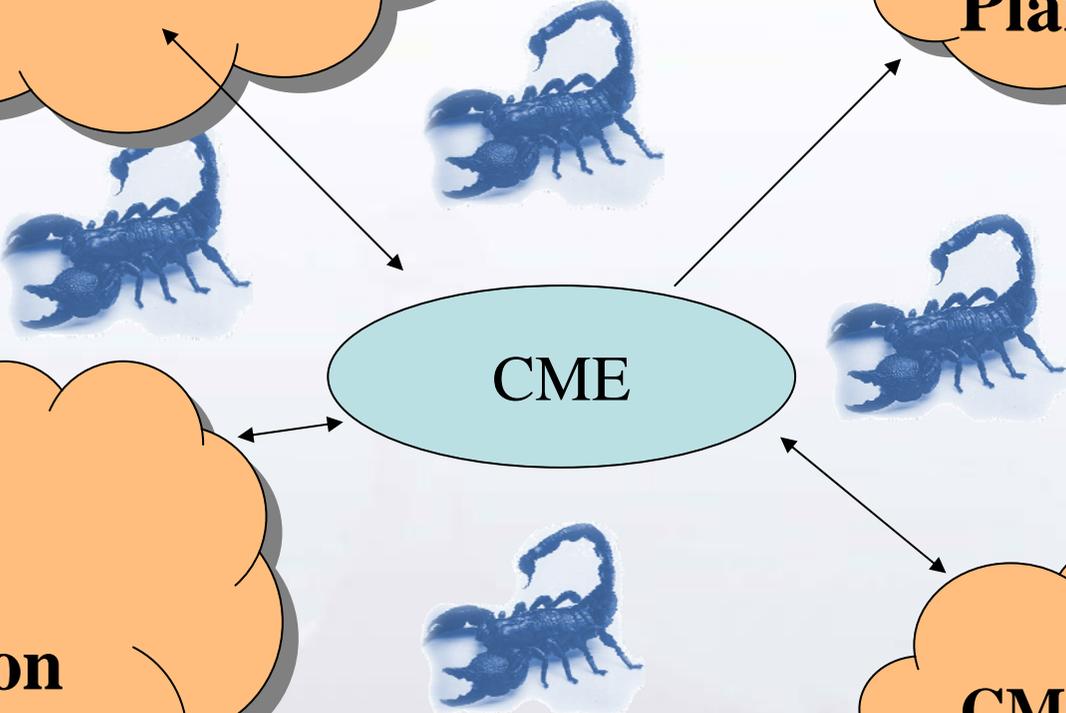
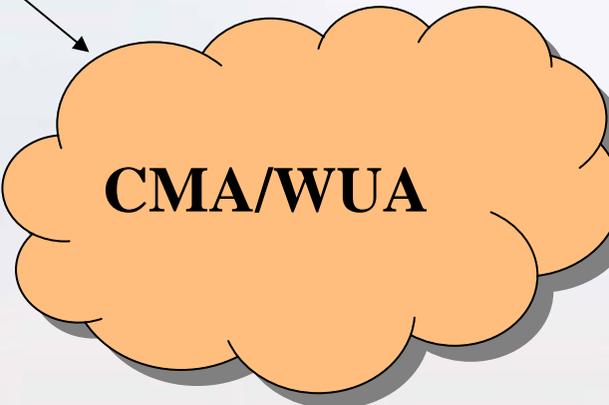
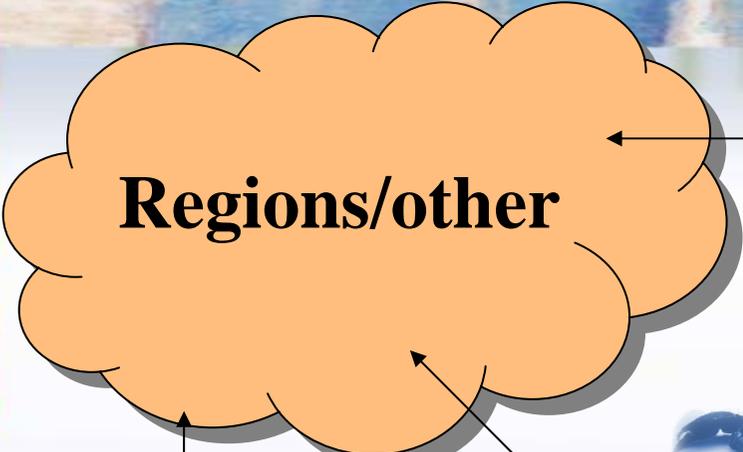
Enhancing the compliance & enforcement environment cont....

- *Best practice approach:* The Task Team will strive to keep all related departments and units informed of the latest initiatives and will attempt to institutionalise best practice through dissemination of ‘living’ procedure documents.
- *Firm but fair:* “reasonable” measures are required by the Constitution and directed by courts, the Task team will cultivate a ‘firm but fair’ image by carefully selecting cases that demonstrate firm action (criminal sanctions) and fair action (following proper administrative procedures).



Enhancing the compliance & enforcement environment cont....

- The compliance & enforcement environment is also enhanced by joint operations with the following organisations:
 - Department of Agriculture
 - Department of Environmental Affairs and Tourism
 - Department of Environmental Affairs and Development Planning
 - Organised Crime (SAPS)
 - National Prosecuting Authority (NPA)
 - DPP
 - NIA
 - Provincial Governments Departments
 - Research Institutions





GROUND WATER EXAMPLE

CME



DEPT: TRANSPORT/WSA

SARS