



BOWMANS

THE VALUE OF KNOWING

ENVIRONMENTAL SEMINAR

11 MAY 2017

ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

Targets, Trends and Tips





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THE VALUE OF KNOWING

***ENVIRONMENTAL
ENFORCEMENT TRENDS IN
2016 AND 2017 FROM THE
ENFORCEMENT DIRECTORATE
OF THE DEA OR THE GREEN
SCORPIONS INCL. NEMA, THE
NWA AND THE AQA***



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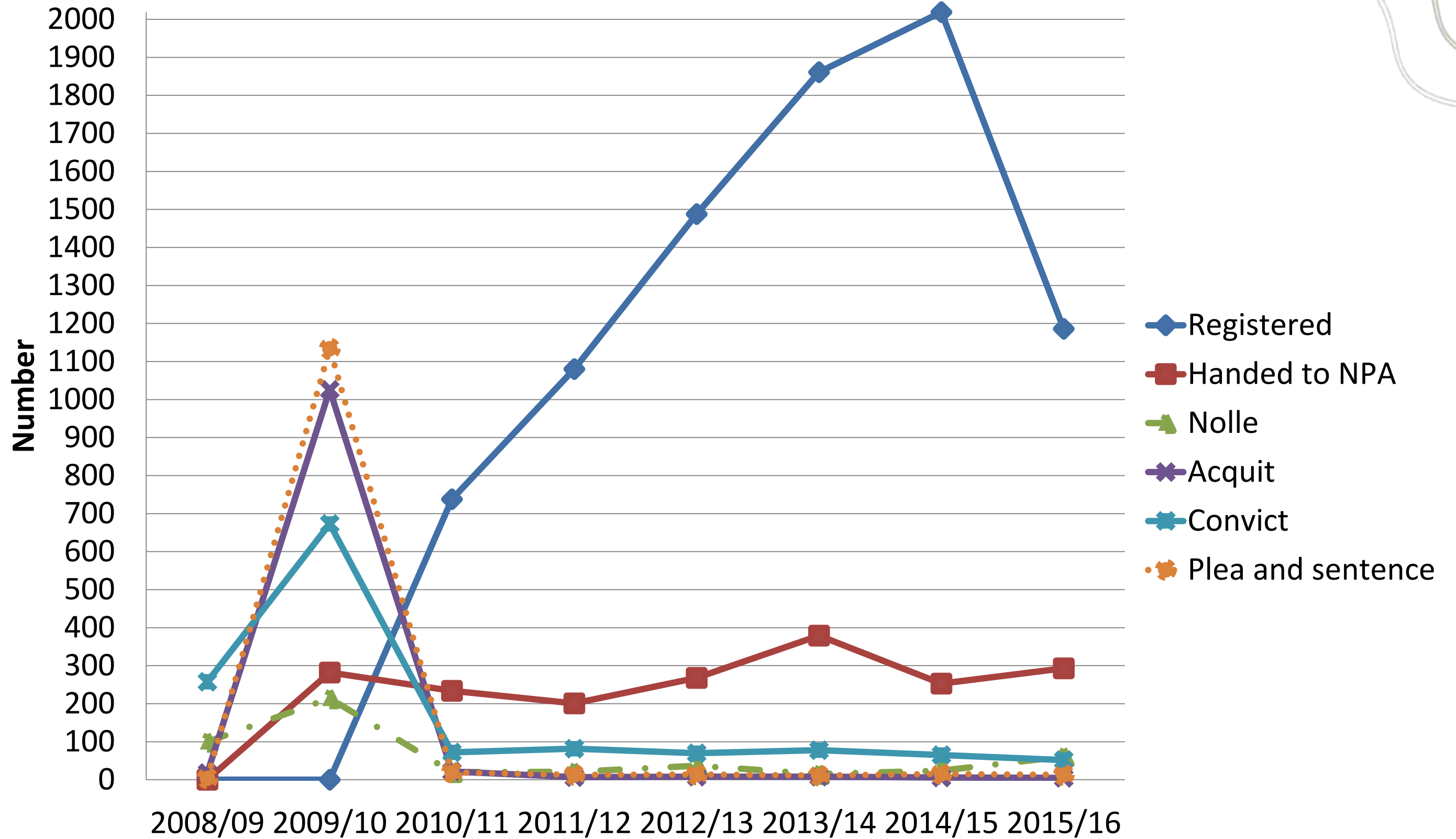


INTRODUCTION

1. Over the last seven or so years
2. Annually Reported - Department of Environmental Affairs (**DEA**)
3. National Compliance and Enforcement Reports (**NECER**)
4. Including by Environmental Management Inspectors (**EMIs**)
5. Reports on enforcement activities in the following subsectors:
 - **Green:** the biodiversity and protected areas,
 - **Blue:** integrated coastal management and
 - **Brown:** pollution, waste and EIA
6. Our interest and focus on 'brown issues' – industry compliance and enforcement concerns
7. Trends in the enforcement mechanisms used and activities targeted

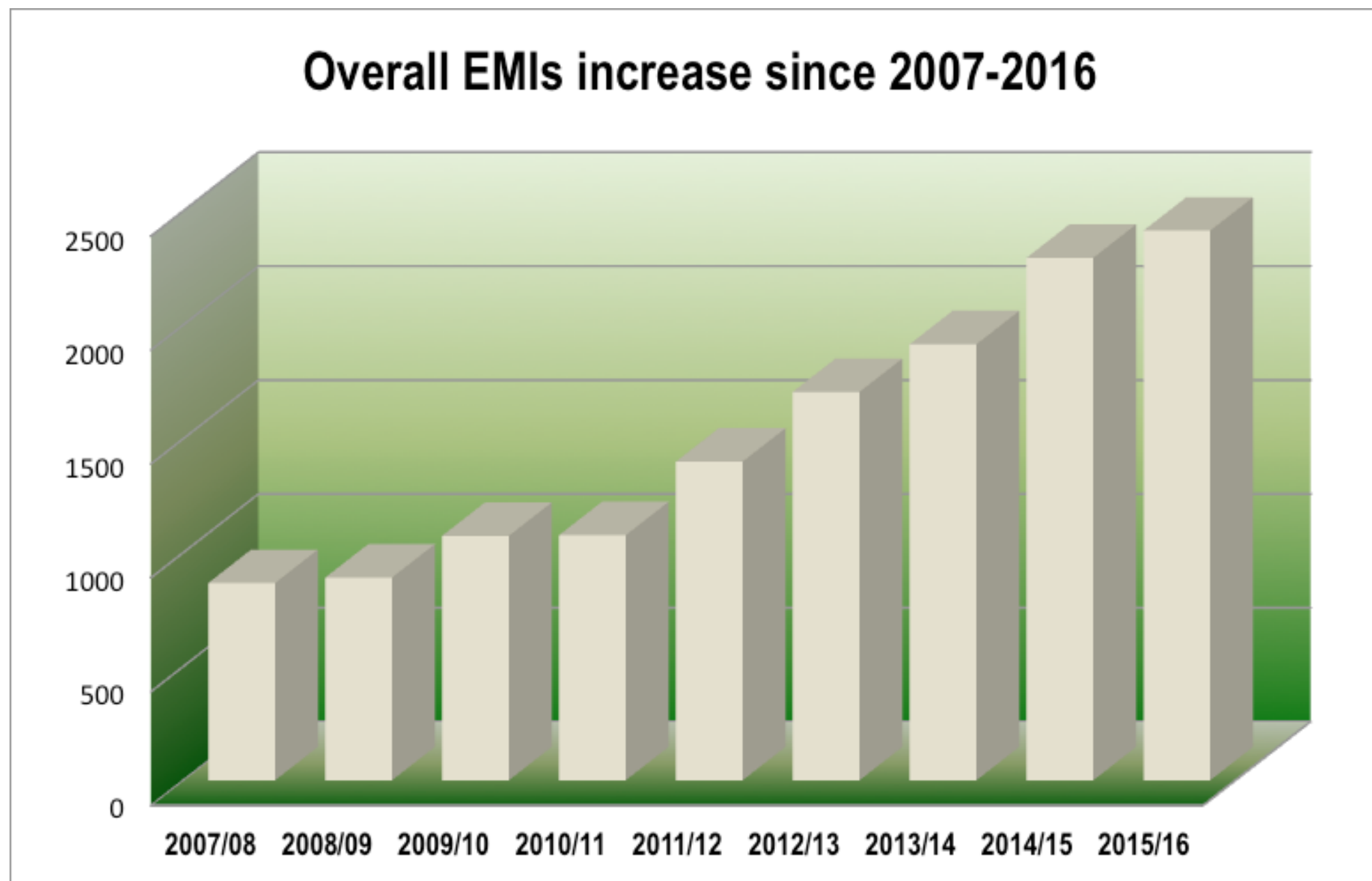
CRIMINAL ENFORCEMENT DATA –

green, blue and brown offences



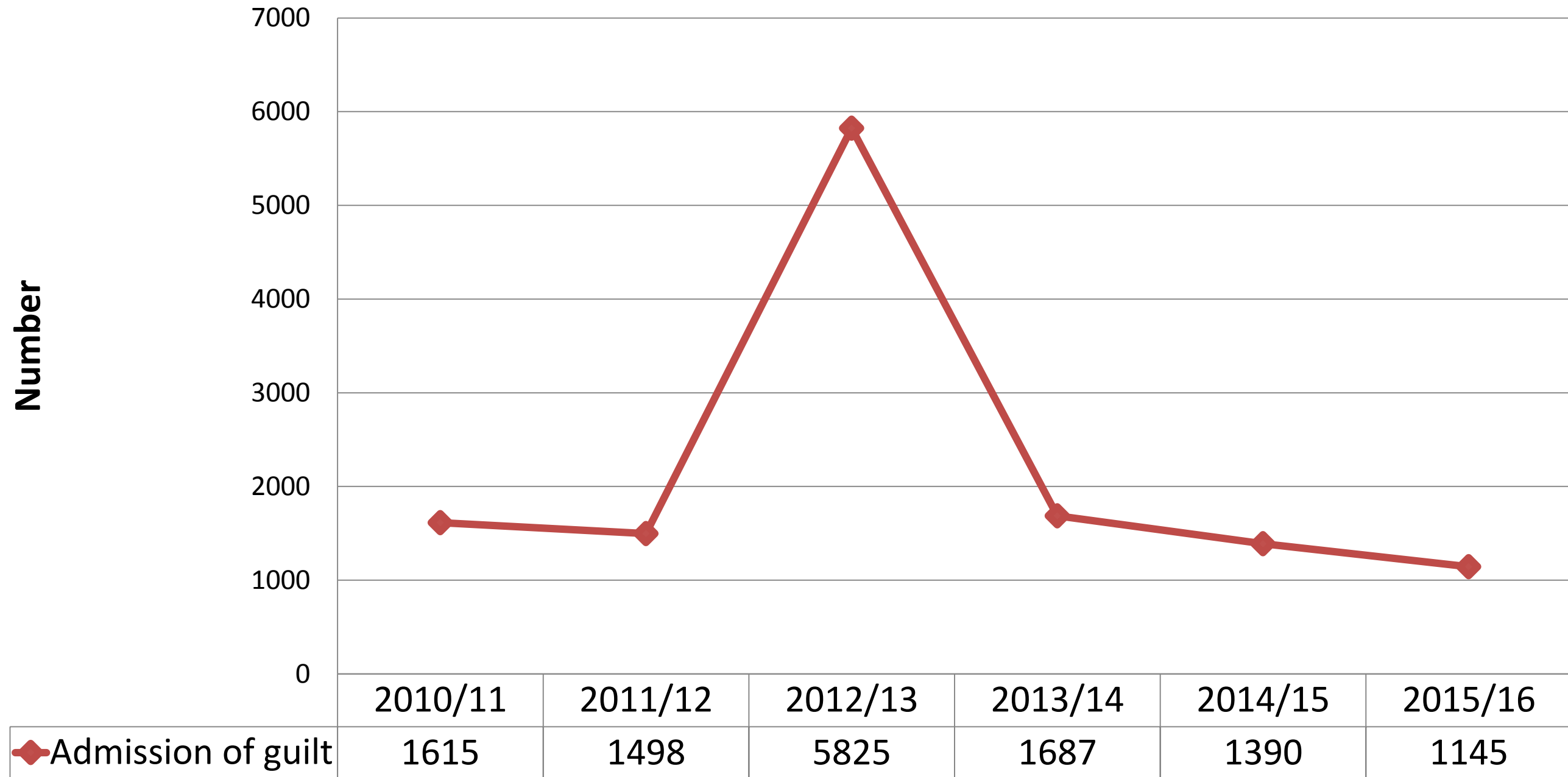
2015/16 NECER

1. Increase in the total number of EMIs on the national register from **2294** in 2014/15 to **2411** (national and provincial authorities) in 2015/16.
2. Number of EMI's have consistently increased over the years (NECER, p5)



ADMISSION OF GUILT

Admission of guilt



ADMISSION OF GUILT FINES

1. Stats may be distorted by ‘green’ offences – most admission of guilt fines
2. NECER reports it separate from convictions
3. Section 34G of the National Environmental Management Act (**NEMA**), read with section 57 and 57A of the Criminal Procedure Act (**CPA**)
4. Currently the following Regulations:
 - **NEMA: Protected Areas Act** Admission of Guilt Fines Regulations, 2011.
 - Minor offences, fines up to R2 500.00
 - **Waste Act:** Admission of Guilt Fine Regulations, 2015
 - General waste aspects only, minor offences up to R5 000.00 fine
 - Mandate of Grade 4 EMIs
5. The nature of the offences and the amount of the fine suggest something similar to “local authority” or “minor offences” which are dealt with separately in the CPA

ADMISSION OF GUILT FINES (continued)

- Distinguish between: Fines vs Admission of guilt fines
 - For example, Section 24G fines = administrative fine,
 - Road traffic offences - Section 341 notices “compounding of minor offences” = no criminal record if you pay these fines
 - Schedule 3 – traffic offences and by-law offences
 - Section 54 summons or 56 notice to appear in court – admission of guilt fine = record
- **THUS**, admission of guilt = conviction and record
- **However**, concerns re “fit and proper person”
 - in applying for a Waste License: relates to ‘contravention or failure to comply’
 - not limited to convictions



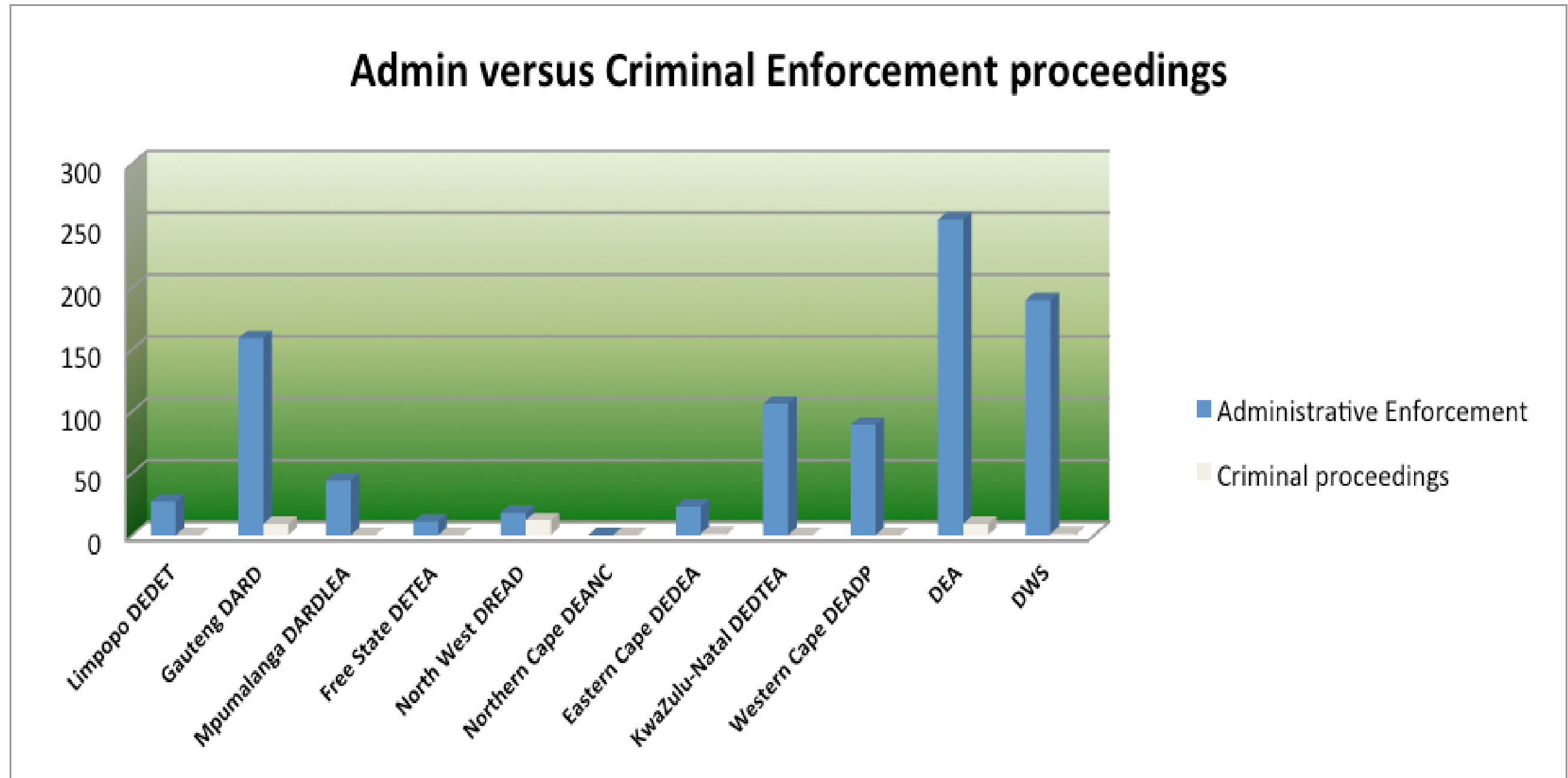
CRIMINAL SANCTION

1. Administrative sanctions :
 - not mutually exclusive
 - not successive
2. Suite of criminal offences across environmental legislation
3. In an industrial operations context – negligence more than intent
4. What should the criminal sanction be reserved for?
5. Over criminalisation?
6. Should we not have a fine system for lesser offences?
7. Administrative Penalties Research Project (p108)



ADMINISTRATIVE SANCTIONS IN COMPARISON TO CRIMINAL

'The use of administrative enforcement (i.e. directives and notices) remains the preferred tool for the authorities that deal with **brown** issues' (p14&15)



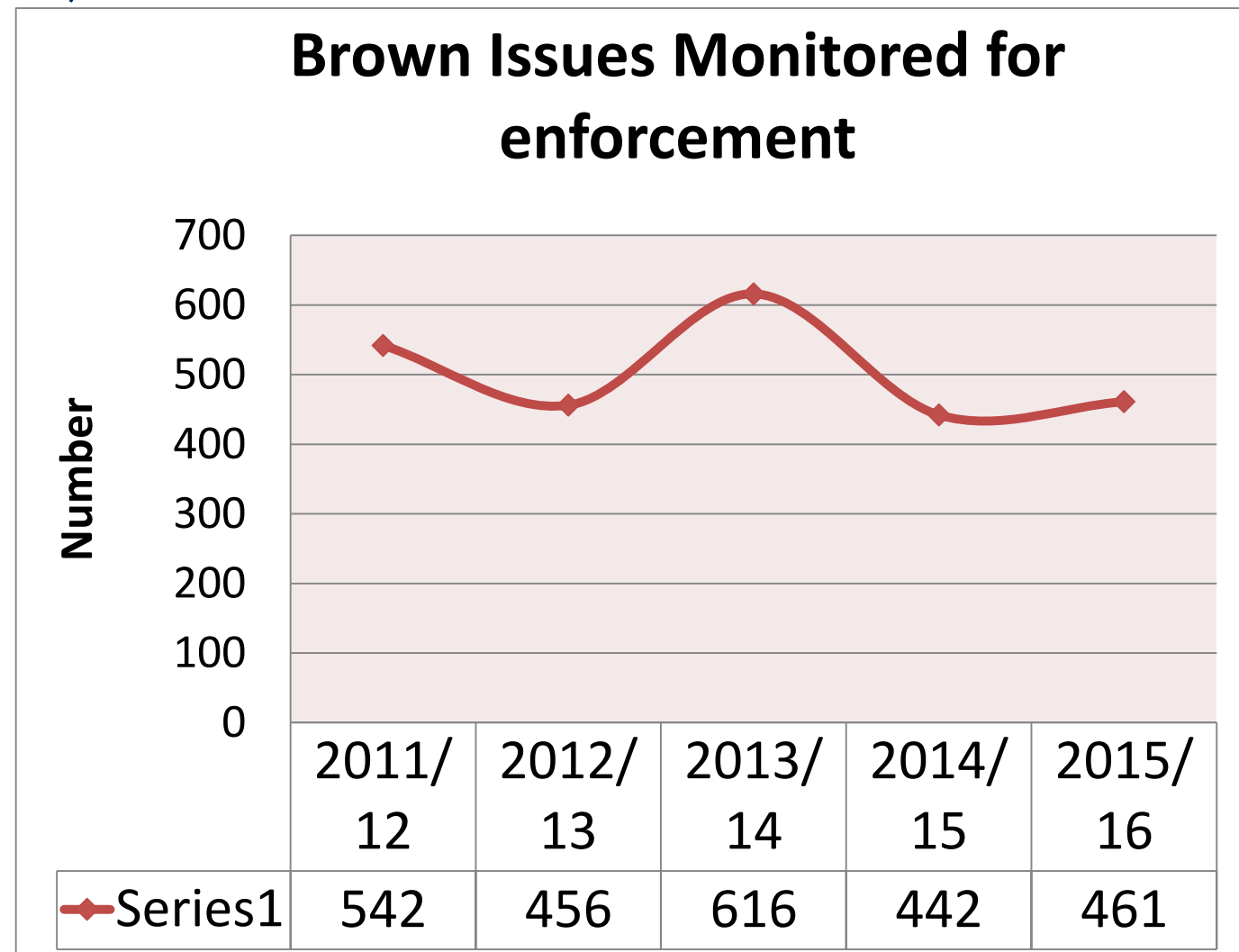
BROWN SECTOR:

2014/15 NECER

Strategic sectors that were prioritised (p3):

- Ferro-alloy steel and iron;
- Refineries;
- Cement;
- Paper and pulp;
- Health care risk waste treatment / disposal;
- Hazardous landfill;
- Power generation.

**The Compliance Monitoring / Inspections
in the brown sector over the last six years**



BROWN SECTOR

2015/16 NECER

1. Sense is that the criminal convictions dominated by the green subsector
2. Most prevalent crimes reported for the **brown** sector:
 - Unlawful commencement of listed activities as the most common non-compliance (p17)
 - Priorities re Environmental Impact Assessment and Pollution:
 - waste water treatment facilities
 - health care risk waste; and
 - other strategic identified industrial sectors – similar to this in the previous reporting year with the addition of power generation and waste tyres

TRENDS: BASED ON NECER

1. Relative consistency in the statistics regarding
 1. matters handed to NPA,
 2. acquittals,
 3. convictions,
 4. plea and sentence agreements,apart from the anomaly in 2009/10
2. A lot more matters investigated by DEA than handed to NPA
3. Administrative action still significantly outweighs criminal prosecution
4. Investigations of compliance dominate the brown sector
5. Criminal prosecutions in the brown sector are the minority (dominated by green)

TRENDS: OUR EXPERIENCE

Atmospheric emissions:

1. Significant concern for business is the compliance of legacy facilities with new emissions standards
2. Application for extension of the emissions requirements
3. Huge capital expenditure vs criminal sanctions
4. Finding the balance

Listed Activities:

- ✓ Operating without an authorisation, licence etc.
- ✓ Focus area of DEA
- ✓ In our experience challenges in changing law and applying listed activities at the relevant time
- ✓ Use of listing notices not applicable



TRENDS: OUR EXPERIENCE

Waste

1. Focus area, a number of compliance and enforcement actions
2. Buried waste and possible associated pollution - focal point
3. Unsuccessful attempts to put the waste generator on the hook for a contractor's non-compliance
4. Recently in the media, e.g. Enviroserv Shongweni in KZN, Interwaste FG Landfill in Olifantsfontein
 - Often suite of permits required, conditions compliance
 - Green Scorpion inspections and monitoring, often following complaints
 - Operator to conduct specialist studies
 - Directives to cease, following pre-directives
 - Criminal charges simultaneously
 - Underlying problem of where does the waste go and what is the practical and reasonable scenario



TRENDS: OUR EXPERIENCE

Mining

- Area where there have been successes for the authorities, particularly DWS
- Activities without water use licence, wetlands, pollution, dunes etc.
- Particular focus of NGOs like FSE
- Ongoing debate regarding powers of DEA and DMR in the enforcement sector, One Environmental System (e.g. the setting aside of the Mineral Sands search warrant)
- Sale of marginal mines is a risk in respect of the possibility of prosecution (Blyvoor, Pamodzi etc)
- Mining rehabilitation liability, historical pollution, prosecution re closure plans and non compliance with EMP, directors being charged and potentially other role players (Blyvoor, Blue Platinum Ventures 2014)

Water:

- See this with mining – activities in wetlands
- Also overlaps with NEMA listed activities within watercourses
- Water use entitlements and impacts on water resources

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THANK YOU

