

Appendix U: Enforcement Actions

The Department of Defense (DoD) is committed to upholding full and sustained compliance with federal, state, and local environmental laws and regulations that protect human health and preserve natural resources. Despite its resolution, noncompliance occasionally occurs, which can result in enforcement actions being filed against DoD. DoD Instruction 4715.6 defines an enforcement action as any formal, written notification by the U.S. Environmental Protection Agency (EPA) or other authorized federal, state, or local environmental regulatory agency of the violation of any applicable statutory or regulatory requirement.

Applicable Requirements

Enforcement actions can result in penalties and fines, which detract valuable financial resources from DoD and can interfere with operations and the success of the military mission. This appendix presents a summary of fines imposed or assessed against DoD and the military departments under federal, state, or local environmental laws during the current and preceding four fiscal years, as required by 10 U.S.C. §2706(b)(2)(D). This summary does not include non-monetary penalties. Figure U-1 displays fines assessed by federal, state, and local agencies against the Components. In addition, it is DoD policy to document the number of enforcement actions. The Department began to collect data on domestic and overseas enforcement actions separately in Fiscal Year (FY) 2007.

Current Management Practices and Performance Evaluation Criteria

DoD tracks fines resulting from enforcement actions and categorizes them under the following statutes: Clean Air Act (CAA) (42 U.S.C. §7401), which regulates air pollutants; Clean Water Act (CWA) (33 U.S.C. §1251), which protects surface water; Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) Subpart C (RCRA/C), which addresses hazardous waste; RCRA Subpart D (RCRA/D), which addresses solid waste; RCRA Subpart I (RCRA/I), which addresses the release of petroleum from underground storage tanks; and “Other,” which includes other federal, state, and local statutes. If an

Figure U-1 Fines Assessed (in thousands)*

Component	EPA	State	Local	Total
Army	\$200.4	\$252.8	\$0.0	\$453.2
Navy	\$22.1	\$248.0	\$7.5	\$277.6
Marine Corps	\$0.2	\$0.5	\$0.7	\$1.3
Air Force	\$274.8	\$88.2	\$27.0	\$390.0
DLA	\$0.0	\$0.0	\$0.0	\$0.0
Total	\$497.5	\$589.5	\$35.2	\$1,122.1

* Due to rounding, subtotals may not equal fiscal year totals.

enforcement action cites violations in more than one statutory requirement, then it is counted as multiple enforcement actions, one under each statutory requirement category. Multiple violations cited by an enforcement action under one statutory requirement, however, are grouped together and counted as one enforcement action.

Enforcement actions filed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund, are not reported in this appendix, but are reported in the Restoration appendices. Enforcement actions filed under other environmental statutes outside of compliance also are not reported in this appendix.

In the 2007 Defense Installations Strategic Plan, DoD resolved to reduce new environmental enforcement actions received by 40 percent from the FY2006 baseline by FY2009. DoD also has resolved, in a memo on Revised Pollution Prevention and Compliance Metrics (12 October 2004), to maintain robust self-audit and corrective action programs, and to promptly identify and correct non-compliance. Data on self-audits and time required to resolve non-compliance are not reported in this appendix.

DoD

Figure U-2 shows new, closed, and open enforcement actions assessed against DoD. New enforcement actions, as defined in DoD Instruction 4715.6, are any enforcement action received during the reporting period, according to the date of the formal written notification. Closed enforcement actions are enforcement actions that have been resolved through revocation by the regulator, closure following a written notice from the regulator, closure after a reasonable time span following written notice of intent to the regulator to close the enforcement action, or receipt of a signed compliance agreement or order. An open enforcement action is one that has been issued but is not yet closed. Enforcement actions show a general decrease over the past four years, with 270 new, 227 closed, and 169 open in FY2008. Increased regulatory inspections account for increases in new and open enforcement actions in FY2008.

Figure U-3 illustrates fines assessed against DoD by origin. In FY2008, the amount of fines assessed increased to \$1.1 million since FY2007. While this marks a significant increase over the course of one year, the fines assessed in FY2008 were still lower than in FY2004, FY2005, or FY2006. In FY2008, fines assessed by state regulatory agencies totaled \$589,500, which represent a \$273,000 increase compared to the previous year. Fines assessed by local regulatory agencies decreased by 48 percent from past years to \$35,200. There were no fines imposed or assessed against DoD that exceeded \$1.0 million in FY2008.

Figure U-2 DoD Enforcement Actions (Domestic and Overseas)

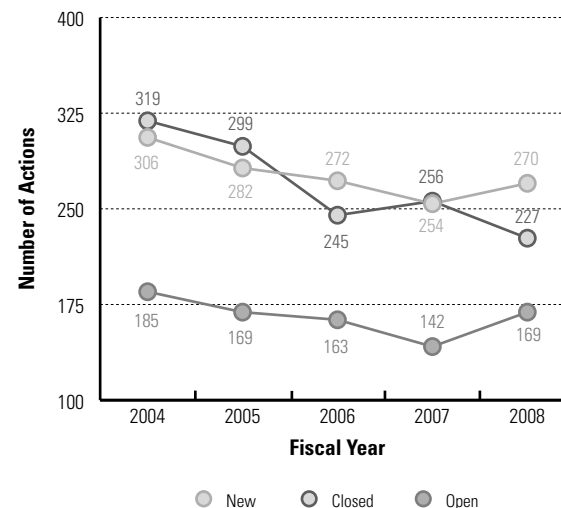
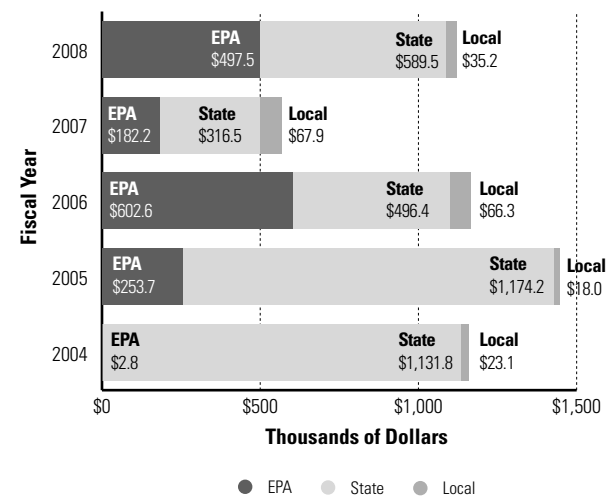


Figure U-3 DoD Fines Assessed*



* Due to rounding, subtotals may not equal fiscal year totals.

Army

The number of new enforcement actions assessed against the Army increased in FY2008 by 38 percent to 130, largely due to an increase in CWA and SDWA violations. Figure U-4 illustrates FY2008 new enforcement actions are higher than any of the other previous four years, and corresponds to an increase in open enforcement actions. The number of closed enforcement actions increased to 91 in FY2008. The value of fines assessed against the Army increased 30 percent to \$453,200 in FY2008 compared to FY2007. A significant source of Army fines assessed in FY2008 (over 35 percent) and prior years results from hazardous waste and other violations associated with mandated demilitarization facilities for chemical weapons. These facilities draw intense regulatory scrutiny and many violations for which fines are assessed and self-reported by the Army as a condition of the operating permit. As shown in Figure U-5, FY2008 fines assessed are substantially less than FY2004, when total fines exceeded \$900,000. The Army has reported no fines assessed by local regulatory agencies in FY2008.

Navy

In FY2008, the number of new enforcement actions decreased for the second straight year. In 2005, Navy modified its enforcement action reporting requirements in an effort to increase command attention and oversight. This resulted in a general decline in all enforcement actions from FY2004 to FY2005, as illustrated in Figure U-6. In addition, Navy led an aggressive effort to resolve outstanding violations in FY2007. As a result, the number of open violations decreased by 44 percent from FY2006 to FY2008; however, the total amount of the fines in FY2008 (\$227,600) was higher than any of the previous four years. A significant portion of the total, \$110,000, was due to a single state fine for a hazardous waste evaluation. Figure U-7 shows Navy's fines assessed from FY2004 through FY2008.

Figure U-4 Army Enforcement Actions (Domestic and Overseas)

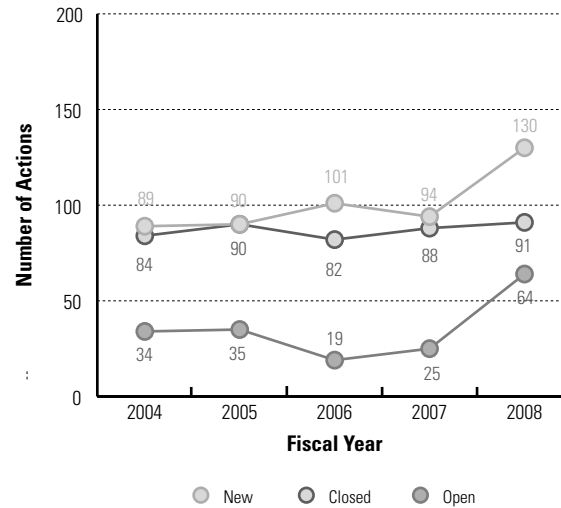
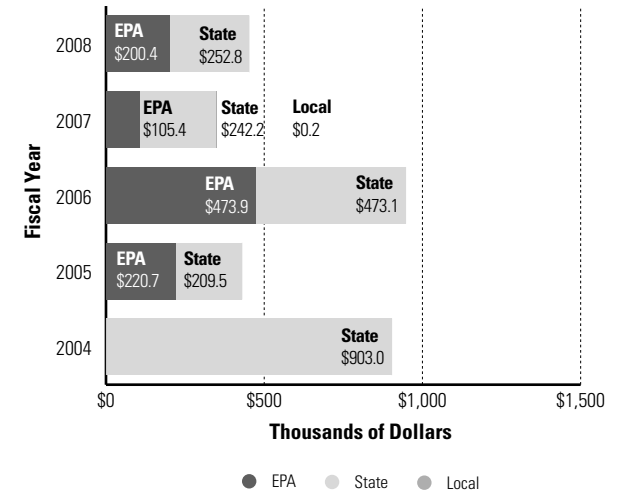


Figure U-5 Army Fines Assessed*



* Due to rounding, subtotals may not equal fiscal year totals.

Figure U-6 Navy Enforcement Actions (Domestic and Overseas)

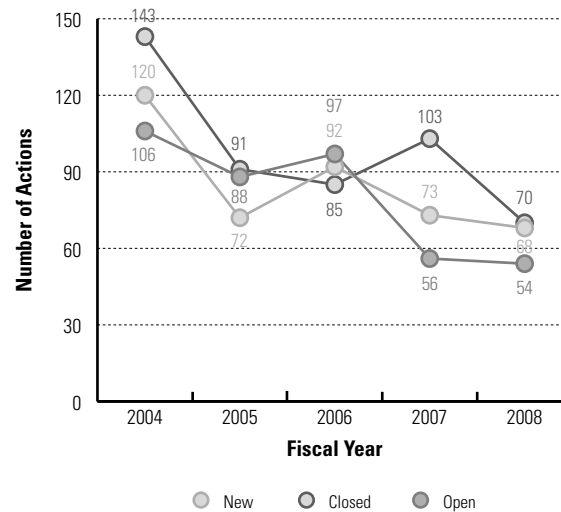
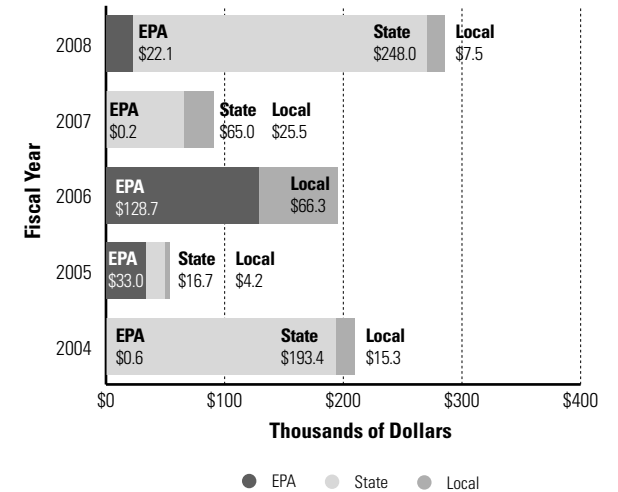


Figure U-7 Navy Fines Assessed*



* Due to rounding, subtotals may not equal fiscal year totals.

Marine Corps

Figure U-8 displays 37 new and 43 closed enforcement actions for the Marine Corps in FY2008, mostly due to CAA and CWA violations. Open enforcement actions decreased from 38 in FY2007 to 34 in FY2008. As shown in Figure U-9, most fines assessed against the Marine Corps are from local regulatory agencies. In FY2008, the Marine Corps was assessed \$650 by a local agency for a CAA violation, \$528 by a state agency for a CWA violation, and \$150 by EPA for a RCRA/I violation. FY2008 marks the lowest amount of total fines assessed since FY2004, with the exception of FY2006.

Air Force

Enforcement actions against the Air Force, as shown in Figure U-10, have decreased significantly since FY2004. In FY2008, the Air Force reported 34 new and 21 closed enforcement actions. The Air Force decreased the number of new enforcement actions by approximately 47 percent since FY2004. The decrease since FY2007 is largely due to fewer CWA and SDWA enforcement actions. There were 17 open enforcement actions in FY2008, which is consistent with previous years. Fines against Air Force in FY2008 increased to \$390,000, as shown by Figure U-11. This rise in total fines assessed is primarily a result of a \$131,000 fine from EPA at Andrews Air Force Base for a RCRA/D violation.

Figure U-8 Marine Corps Enforcement Actions (Domestic and Overseas)

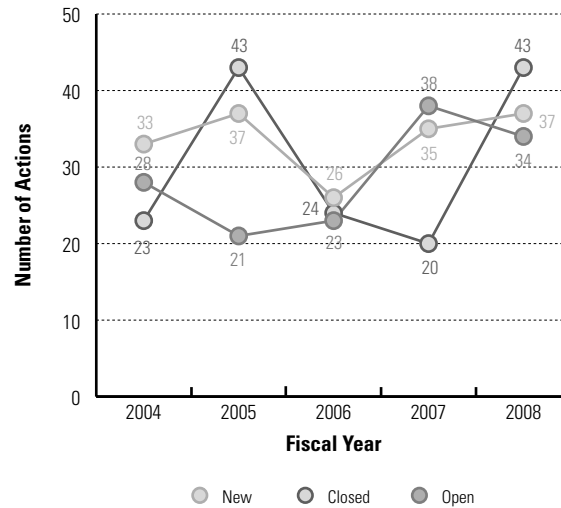
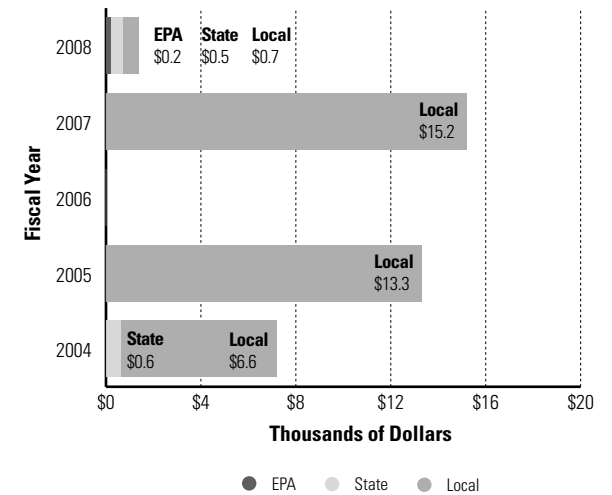


Figure U-9 Marine Corps Fines Assessed*



* Due to rounding, subtotals may not equal fiscal year totals.

Figure U-10 Air Force Enforcement Actions (Domestic and Overseas)

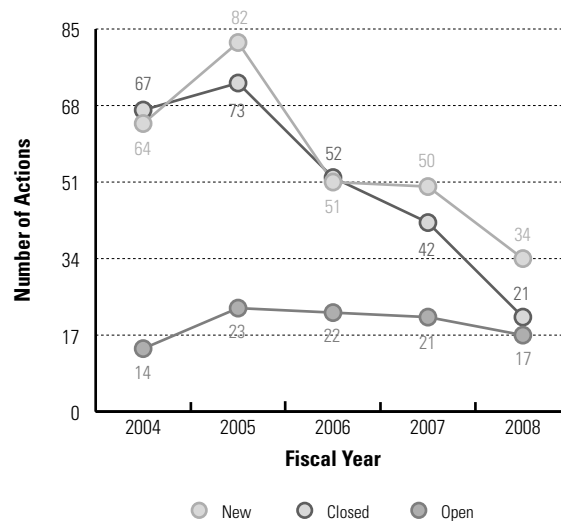
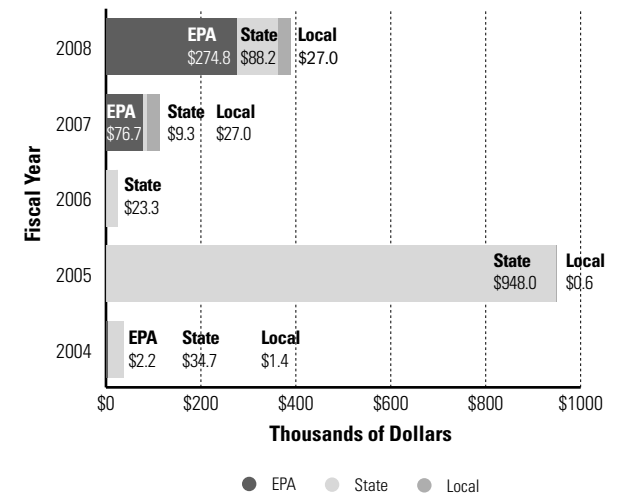


Figure U-11 Air Force Fines Assessed*



* Due to rounding, subtotals may not equal fiscal year totals.

DLA

DLA reported one new and two closed enforcement actions in FY2008, as shown in Figure U-12. The new enforcement action was for failure to comply with operational provisions of a Clean Water Act permit. The action remained open at the end of the fiscal year. DLA reported no fines assessed against the agency in FY2008.

Figure U-12 DLA Enforcement Actions (Domestic and Overseas)

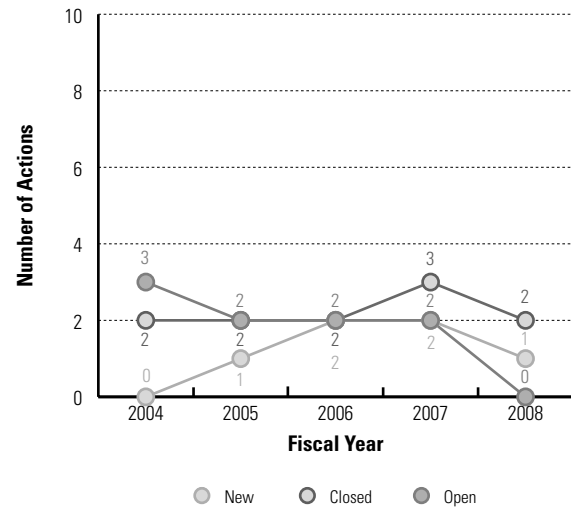
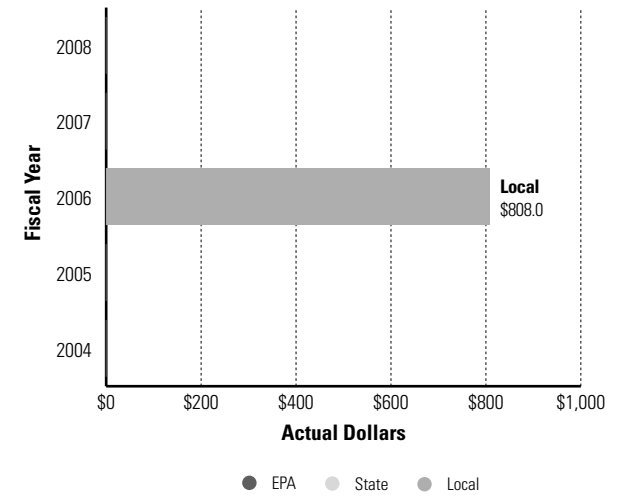


Figure U-13 DLA Fines Assessed*



* Due to rounding, subtotals may not equal fiscal year totals.