
COMPLIANCE

INTRODUCTION

The Department of Defense (DoD) compliance program supports the success of DoD's mission, while protecting human health and the environment, in an uninterrupted and cost-effective manner. The Department strives to ensure effective and efficient compliance with all Federal, state, and local environmental laws and regulations, and provides guidance for meeting such requirements to the DoD Components as necessary.

Pollution prevention is DoD's preferred method to achieve compliance. The DoD compliance program encompasses the development of laws and regulations, the formulation of guidance and steps to implement these requirements, and periodic reviews to measure DoD's progress towards meeting compliance requirements in a cost-effective manner. DoD works with other agencies during the development of environmental laws and regulations to ensure that such requirements are achievable while maintaining mission readiness. DoD makes sure that regulators understand the implications of their decisions on mission readiness, cost effectiveness, and training. As DoD reviews and assesses its own progress, it makes adjustments to ensure full and sustained compliance.

HIGHLIGHTS OF ACTIVITIES IN FISCAL YEAR 2003

DoD's compliance program encompasses several performance metrics, including Clean Water Act (CWA) and National Pollutant Discharge Elimination System (NPDES) permits, Clean Air Act (CAA) requirements, Safe Drinking Water Act (SDWA) requirements, compliance enforcement actions, and fines and penalties. DoD is proud of its accomplishments in complying with environmental laws and regulations and continues to place a high priority on protecting human health and the environment.

Water Quality

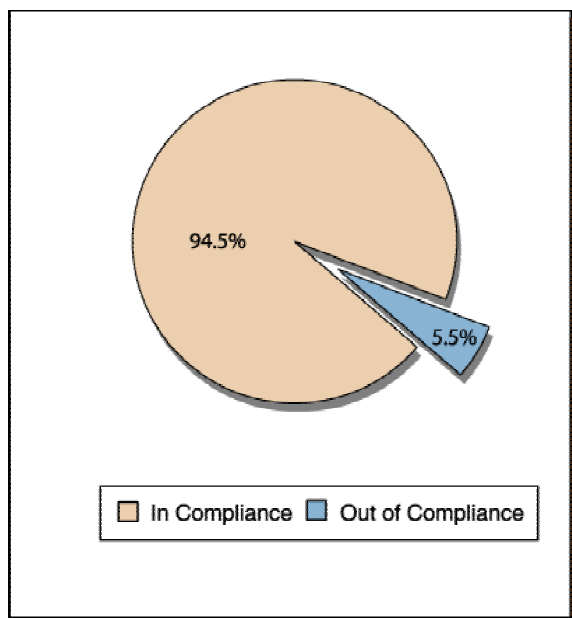
Water quality is important to the success of DoD's mission. By maintaining high water quality standards, DoD ensures that personnel are healthy and able to perform their important functions and that neighboring communities are not adversely impacted by DoD activities.

Each state adopts water quality standards approved by the U.S. Environmental Protection Agency (EPA). The standards describe the way a particular body of water may be used and establish the water quality criteria to protect these bodies of water. DoD must also comply with stringent drinking water standards. The Department works hard to comply with all water quality regulations.

Compliance with Clean Water Act Permitted Systems

The Clean Water Act is the cornerstone of surface water quality protection in the United States. The statute employs a variety of regulatory and nonregulatory tools to reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters so that they can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water." For many years following the passage of the CWA in 1972, the main focus was on the chemical aspect of the "integrity" goal. During the last decade, however, more attention has been given to the physical and biological aspects.

Figure 15
CWA Permit Compliance



DoD works hard to achieve compliance with the CWA, including the NPDES permit system. DoD currently holds 1,861 CWA permits, including discharges to publicly-owned treatment works, domestic and industrial wastewater treatment plants, and storm water systems. In Fiscal Year (FY) 2003, 94.5 percent of DoD's wastewater systems were in compliance (Figure 15). DoD's compliance rate number is different from EPA's report of DoD's compliance rate. EPA measures only major NPDES permits, but DoD measures all CWA permitted systems. In 2003, DoD began tracking only permits instead of systems to simplify reporting requirements.

Uniform National Discharge Standards

Section 312 of the CWA regulates vessel sewage discharge. Enacted in 1972, Section 312 requires EPA to set national standards of performance for marine sanitation devices (MSDs) used to prevent

the discharge of untreated or inadequately treated sewage. In the case of DoD vessels, the Secretary of Defense must develop regulations for the design, construction, installation, and operation of MSDs that will meet EPA standards.

The Uniform National Discharge Standards (UNDS) law regulates non-sewage liquid discharges from Armed Forces vessels. The UNDS law, codified in Section 312(n) of the CWA, extended Section 312 to include liquid discharges other than sewage. Section 312(n) mandates joint rulemaking by the Secretary of Defense and the EPA Administrator. The Secretary of Defense delegated his authority under 312(n) to the Secretary of the Navy.

One of the purposes of UNDS is to “enhance the operational flexibility of vessels of the Armed Forces.” UNDS will protect ship Commanding Officers from having to interpret different rules for each port. UNDS reduces potential liability because states will not be able to separately regulate vessel discharges. The UNDS law establishes a complex rulemaking process to address 25 discharges for 7,000 Armed Forces vessels across seven factors.

Because of the complexity of the rulemaking process, the Navy and EPA are using a phased approach to implement the UNDS requirements. During Phase I, completed in 1999, discharges were analyzed and it was determined which were of sufficient environmental consequence that the use of a marine pollution control device (MPCD) might be warranted.

During Phase II, Federal MPCD performance standards will be developed for each discharge requiring control from Phase I. The Navy and EPA have identified numerous potential MPCDs for evaluation during Phase II and will evaluate each MPCD to determine whether it is sufficiently proven in the marine environment. MPCDs that pass the screening process will then undergo feasibility and environmental analyses on vessels that represent the range of different vessel types generating the discharges. Information from these analyses will be used as the basis for developing performance standards.

Phase III, the final phase of the UNDS rulemaking process, will include creating rules governing the design, construction, installation, and use of the MPCDs established in Phase II.

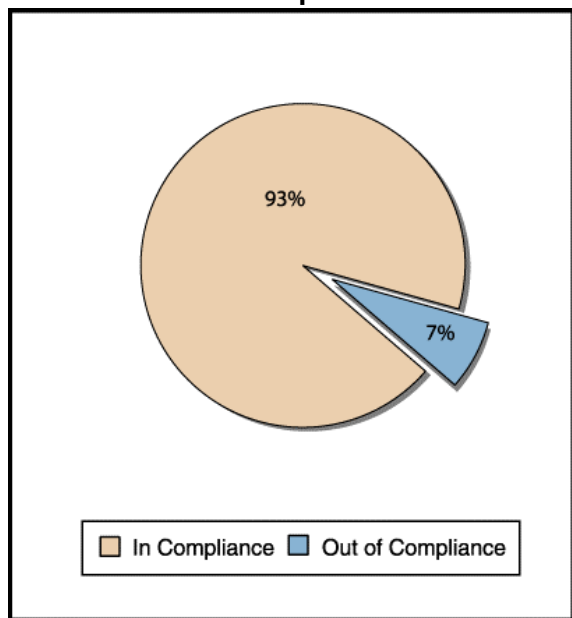
Conducting analyses for all 25 discharges at the same time is not practical, so EPA and the Navy have agreed to analyze the discharges in smaller, more manageable batches. The first batch of Phase II discharges to be analyzed are chain locker effluent, weather deck runoff, elevator pit effluent, hull coating leachate, photographic laboratory drains, surface vessel bilge water, and underwater ship husbandry.

In FY 2003, the Navy and EPA completed technical analysis for all seven Batch One discharges and began the technical analysis of the four discharges in Batch Two (compensated fuel ballast, gray water, seawater piping biofouling prevention, and seawater cooling overboard discharge). Immediately following conclusion of the Batch One technical analyses, regulatory process work for the Batch One discharges started in the 4th quarter of FY 2003. The Navy and EPA plan to publish the Batch One proposed rule in January 2005 and the final Batch One rule in September 2005.

Compliance with Safe Drinking Water Act Requirements

Congress enacted the Safe Drinking Water Act to protect the population by maintaining drinking water and groundwater standards. EPA has set national drinking water standards for all public water systems, including DoD's drinking water systems.

Figure 16
SDWA Compliance Rate



The SDWA requires any operator of a community water system, including DoD, to publish annual Consumer Confidence Reports by July 1 of each year. These reports detail the drinking water quality from throughout the previous calendar year. Operators send reports to all households for which they provide drinking water.

During the first half of CY 2003, DoD provided drinking water to more than 2.1 million people in the United States and U.S. territories. Over 93 percent of this population received drinking water that met established drinking water requirements (Figure 16¹).

In FY 2003, DoD began reporting on compliance with SDWA permits instead of focusing on systems alone in order to enhance the protection of human health and the environment. This change in metric provides a more comprehensive picture of DoD's overall compliance.

The challenge to maintain safe drinking water grows as drinking water systems age and infrastructure deteriorates. DoD is developing long-term plans and projects to ensure that drinking water remains safe and systems remain in compliance.

¹ This metric does not include Army installations. Data for these installations was not available at the time of this report.

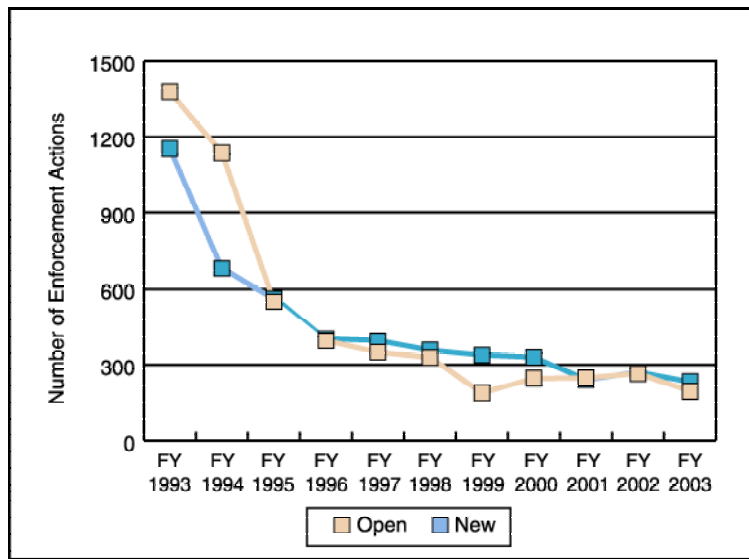
Compliance Enforcement Actions

Failure to comply with environmental laws and regulations can result in fines and penalties, having a negative impact on DoD's mission. Regulatory agencies can limit or prevent the use of non-compliant facilities and equipment, impacting DoD's ability to test new equipment and train.

The number of new compliance enforcement actions is at the lowest level since its peak in FY 1993, even as the number of state and Federal inspections increased. In 2003, 233 new enforcement actions were leveled against DoD, compared to 270 in 2002. DoD's continued success is due to the use of self-auditing and assessments to identify and correct areas of noncompliance before inspections occur.

Since FY 1994, open enforcement actions have declined 83 percent and new enforcement actions have declined 66 percent. The number of open compliance enforcement actions has decreased from 265 in 2002 to 197 in 2003, a decline of 26 percent (Figure 17). The majority of open enforcement actions, 77 percent, are administrative actions rather than project-related actions. Enforcement actions may remain open due to legal issues, such as whether the Federal government has waived its sovereign immunity and can pay penalties to state or local regulators.

Figure 17
Compliance Enforcement Actions

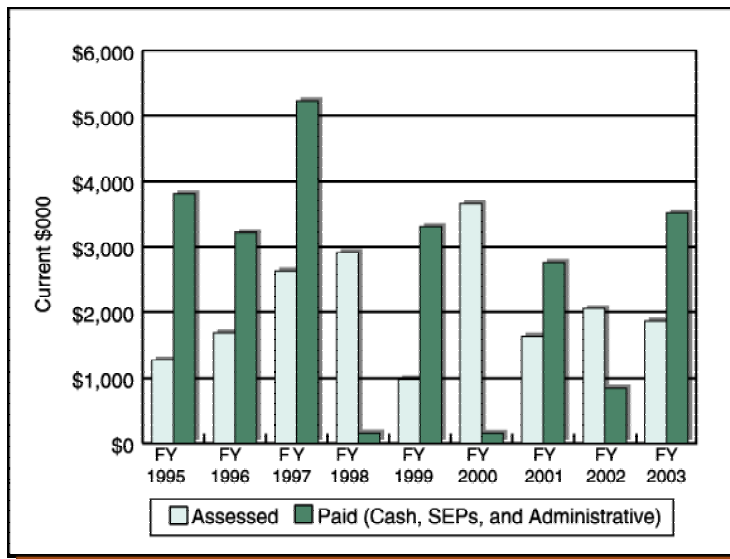


Fines and Penalties

DoD facilities may be subject to fines and penalties if they are found to be in noncompliance with Federal, state, and local environmental laws and regulations. DoD makes every effort, including participating in incentive-based compliance programs and developing compliance assessment systems, to maintain compliance.

The amount of fines and penalties paid during FY 2003 increased over the amount paid in FY 2002 (Figure 18²). The majority of the fines and penalties that DoD paid in FY 2003 were originally assessed in prior fiscal years. A fine assessed in one year might not be paid until a later fiscal year. Therefore, the amounts paid are linked to the amount assessed in the original fine, regardless of the fiscal year assessed. In FY 2003, DoD paid \$3.6 million in fines and penalties.

Figure 18
Fines and Penalties



DoD pays fines either in cash or by funding supplemental environmental projects (SEPs). A SEP is an environmental project carried out in lieu of paying a fine. The project must improve, protect, or reduce risks to public health or the environment. In FY 2003, DoD paid \$1,540,902 in cash and \$2,051,150 in SEPs. Appendix K, Summary of FY 2003 Environmental Quality Fines and Penalties Assessed and Paid, provides a list of the FY 2003 fines and penalties data and highlights trends over the past five years.

In May 2002, DoD, in consultation with the Department of Justice, authorized a more flexible settlement policy in appropriate Clean Air Act penalty cases. Recent court rulings against the government, especially in California, led to the change in policy pending the outcome of ongoing litigation in Florida. This policy shift facilitated the closeout of some longstanding, as well as more recent, Notices of Violation in settlements that allowed for payment but did not admit to liability nor to a waiver of sovereign immunity. Therefore, in FY 2003, the DoD Components closed out a significant number of CAA-related fines and the associated open enforcement actions.

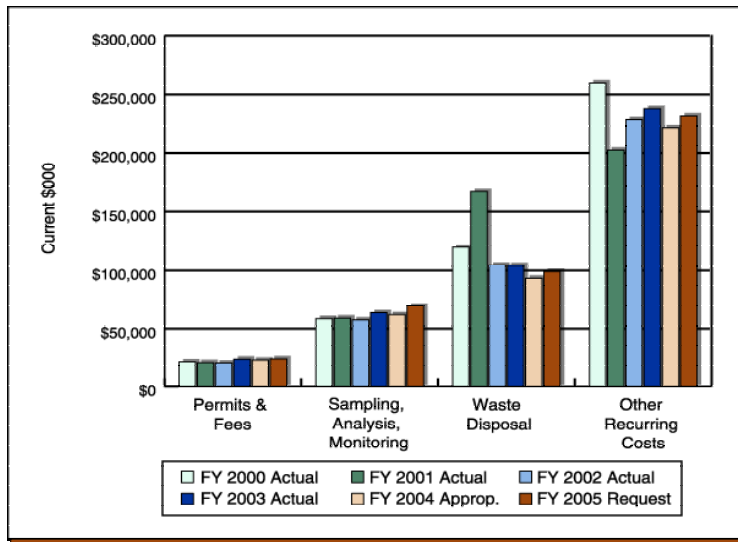
FY 2003 BUDGET EXECUTION

During FY 2003, DoD invested \$1.8 billion in compliance activities. Of this amount, DoD invested \$429 million in recurring compliance costs, excluding manpower, education, and training (Figure 19). Recurring compliance costs are those relatively constant activities that an installation must

² Amount Assessed in FY 2000 does not include a \$16 million fine assessed at Army Installation Fort Wainwright.

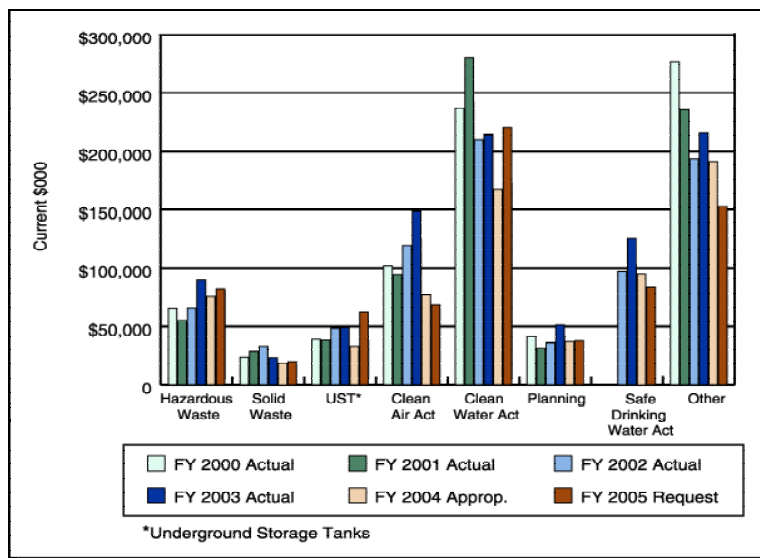
complete to support the mission and maintain compliance with environmental regulations and permit requirements. These activities include routine sampling, analysis of discharges to air and water, and

Figure 19
DoD Budget Summary: Compliance Recurring



hazardous waste disposal. Other recurring costs include purchasing supplies, maintaining and operating equipment, managing NPDES permits and Clean Air Act inventories, and conducting self-assessments. Of the recurring investments, manpower is the largest single cost investment.

Figure 20
DoD Budget Summary: Compliance Nonrecurring



DoD invested 51 percent, or \$916 million of the FY 2003 Compliance Program funds, in nonrecurring projects or one-time events, such as projects to maintain standards at wastewater treatment facilities or to install air pollution controls (Figure 20³). One of the largest non-recurring investments that the Compliance Program makes each year is employing CWA regulations, which requires substantial infrastructure investments in wastewater treatment plants and storm water management.

FY 2005 BUDGET REQUEST

The Compliance Program budget request is the largest portion of the FY 2005 Environmental Quality Program budget request at 83 percent. DoD's FY 2005 budget request for the Compliance Program is \$85 million more than the FY 2004 budget, as appropriated by Congress.

The Compliance Program budget request is the largest portion of the FY

³ The SDWA compliance was reported separately from "other" beginning in FY 2002. This accounts for the decrease in funding in the "other" category.

