



**Environmental Protection Agency**  
**Office of Enforcement and Compliance Assurance**  
**Small Local Governments Compliance Assistance Policy**  
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<http://epa.gov/compliance/resources/policies/incentives/smallcommunity/smalllocalgovca.pdf>

## **A. Introduction and purpose**

The *Small Local Governments Compliance Assistance Policy* promotes comprehensive environmental compliance among small local governments by establishing parameters within which states<sup>1</sup> can reduce or waive the normal noncompliance penalties of small local governments that make use of the state's comprehensive compliance assistance program. Providing conditions and circumstances in which states may reduce or waive normal noncompliance is intended to reassure small local governments that they will not be forced to pay a large penalty if environmental violations are discovered or revealed while they are participating in compliance assistance activities. To be eligible under this policy for reduction or waiver of the normal noncompliance penalty, a small local government must, within specified deadlines, either:

- identify and correct all of its environmental violations;
- identify all of its environmental violations and enter into an enforceable commitment to correct all of its environmental violations in a timely fashion; or
- correct all of its known environmental violations and enter into an enforceable commitment to develop and implement an environmental management system (EMS) to

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<sup>1</sup> State means the agency of any state, commonwealth, or territory of the United States that has received EPA's approval to implement environmental laws and regulations. An Indian Tribe can be a state if it has received EPA's approval for treatment as a state. In cases in which a state agrees to apply the policy to a small local government and that state has not been authorized to implement a particular federal program, EPA shall be the state for purposes of that federally implemented program. Regions should consult with OECA's Office of Regulatory Enforcement prior to implementing this policy.

identify the environmental aspects of its operations and ensure continual environmental improvement.

EPA acknowledges that states and small local governments can realize environmental benefits by negotiating, entering into, and implementing enforceable compliance agreements and schedules that require local governments to correct all of their environmental violations expeditiously while allowing the local government to prioritize among competing environmental mandates on the basis of comparative risk<sup>2</sup>. Small local governments can also realize environmental benefits by entering into enforceable agreements to develop and implement an EMS to manage the environmental aspects of their operations. States may provide small local governments an incentive to request compliance assistance by waiving part or all of the normal penalty for a small local government's violations if the criteria of this policy have been met. If a state acts in accordance with this policy and addresses small local government environmental noncompliance with compliance assistance in a way that results in the small local government making reasonable progress toward compliance, EPA generally will not pursue a separate federal civil administrative or judicial action for additional penalties or additional injunctive relief.

This policy does not apply to any criminal conduct by small local governments or their employees.

**B. Who is eligible for reduction or waiver of normal noncompliance penalties under this policy?**

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<sup>2</sup> As described below, EPA does not intend that states and small local governments must prepare a formal comparative risk assessment as part of the small local government environmental compliance assistance process. Information available from EPA's National Center for Environmental Assessment, <http://cfpub.epa.gov/ncea/>, will help states and local governments identify which local environmental problems pose the greatest risk to human health, ecosystem health, and quality of life.

This policy applies to small local governments that own and operate facilities used to provide municipal services. A local government is defined as an organized unit of general-purpose local government, authorized in a state's constitution and statutes, and established to provide general government to a defined area. A defined area can be a county, municipality, city, town, township, village, or borough. A small local government is a local government that provides municipal services to 3,300 or fewer permanent residents. A local government that supplies municipal services to between 3,301 and 10,000 permanent residents can also qualify for treatment as a small local government if the state determines, in accordance with a capacity test (described below), that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance.

This policy supersedes the previous version of the policy titled the *Policy on Flexible State Enforcement Responses to Small Community Violations*, which became effective on November 25, 1995. To the extent this policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

### **C. How can a small local government qualify for penalty reduction?**

This policy seeks to encourage small local governments to achieve sustained comprehensive environmental compliance in one of two ways. A small local government can work with the state to identify all of the local government's environmental noncompliance and then enter into a written and enforceable agreement establishing a schedule to correct all of its violations in order of risk-based priority. Alternatively, a small local government can enter into

a written and enforceable agreement establishing a schedule to: 1. correct, as expeditiously as practicable and in order of risk-based priority, all violations discovered by the state during an inspection of some subset of the local government's operations; *and* 2. develop and implement an EMS for all of its governmental operations. EPA's deference to such an exercise of a state's enforcement discretion in response to a small local government's violations will be based on an assessment of the adequacy of the process the state establishes and follows in:

- responding expeditiously to a small local government's request for compliance assistance;
- determining which local governments with between 3,301 and 10,000 residents qualify for treatment as small local governments;
- assessing the small local government's good faith and compliance status;
- establishing priorities for addressing noncompliance; and
- ensuring either prompt correction of all environmental violations discovered during the state's comprehensive environmental compliance evaluation of all the local government's operations, or prompt correction of all violations discovered during a state inspection of some subset of the local government's operations and prompt development and implementation of an EMS for all of its governmental operations.

A state must document all findings and activities that are necessary to show adherence to the terms of this policy. If the small local government commits to correct its separate violations in order of risk-based priority, the state's records must discuss the rationale for establishing priorities among the violations to be addressed and explain why the compliance agreement and schedule represents the shortest practicable time schedule feasible under the circumstances.

EPA will defer more readily to a state that has previously submitted to the Agency a description of its comprehensive compliance assistance program for small local governments, thereby allowing EPA to familiarize itself with the adequacy of the state's processes.

**D. How should a state select participating local governments?**

EPA intends this policy to apply only to small local governments unable to satisfy all applicable environmental mandates without assistance from the state. For the purposes of this policy, local governments with 3,300 or fewer permanent residents are assumed to need the state's compliance assistance and are deemed eligible to participate at the state's discretion. Local governments whose permanent residents number between 3,301 and 10,000 can qualify to receive the benefits of the policy only if the state determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance. To make this determination, a state must apply a capacity test that measures such indicators as:

- the local government finds it difficult to comply with routine reporting requirements (*e.g.*, in the past year, the local government has submitted less than 90 percent of the monitoring reports required by applicable environmental regulations);
- the local government has no operation and maintenance plan for its utility operations, or has an operation and maintenance plan that is not routinely followed (*e.g.*, maintenance logs are not regularly updated, are incomplete, or are not kept at all);
- the required drinking water sanitary survey has not been scheduled, or the sanitary survey has been performed, but the local government has not addressed all identified significant deficiencies;

- utility operators are untrained or uncertified, or staffing of certified operators is inadequate to meet the local government's needs;
- utility systems were installed without state oversight and approval, or began operating without receiving final operational approval from the state;
- rights essential to the provision of municipal services are not clearly established and documented by contract (*e.g.*, the local government has no contract with the source from which it obtains its drinking water, or for the disposal of its solid waste);
- the local government does not have current and approved by-laws, ordinances, or tariffs in place with respect to each of its public utility operations;
- there is no formal organizational structure for operation and maintenance of the local government's public utilities clearly identifying the owner, the operator, and the staff and their responsibilities;
- either there are no written job descriptions clearly defining the responsibilities of public utility staff, or the staff is unfamiliar with such documents;
- staff is untrained or inadequately trained;
- written policies covering personnel, customer service, and risk management either do not exist or are routinely ignored;
- lines of communication between public utility staff and agencies or private sector staff that can provide assistance are inadequate or nonexistent;
- the local government does not follow standard accounting principles in the funding of its public utilities, and either has not been audited or was issued an adverse opinion following an audit;

- the local government either does not have an annual budget for operation of a public utility or has an annual budget that is inadequate to meet the demands of operation, maintenance, and environmental compliance;
- public utility rates do not include all users or have not been recently reviewed to examine operational sustainability and viability;
- a significant percentage of accounts (either payable or receivable) are chronically delinquent;
- periodic budget reports and balance sheets are either not produced, or, if produced, have not been approved;
- the local government's tax base is inadequate to support needed environmental expenditures; or
- there are demographic factors that present quantifiable negative impacts on the local government's capacity.

The state must document the capacity test it applied and all findings it made to support its determination of incapacity, and maintain that documentation in records accessible for EPA review.

EPA's evaluation of the appropriateness of a state's small local government comprehensive environmental compliance assistance program will depend in part on whether the state uses adequate measures of technical, managerial, and financial capacity to ensure that only those local governments that truly need assistance were assessed noncompliance penalties that were reduced beyond the extent normally allowed by EPA enforcement policies and guidance.

Not less than quarterly, a state should provide EPA with a list of local governments

participating in its small local government environmental compliance assistance program to ensure proper state and federal coordination on enforcement activity. In addition to any records related to a finding of a local government's incapacity, a state must keep records of contacts between the state and participating local governments, results of compliance assessments, actions taken by the local government to achieve compliance, any written compliance agreements and schedules, and any assessments of a local government's adherence to the terms of its compliance agreement and schedule should be kept in the state's files accessible for review by EPA.

#### **E. How should a state assess a local government's good faith?**

In considering whether a state has established and is following an adequate process for assessing a small local government's good faith, EPA generally will look at such factors as the participating local government's candor in contacts with state regulators and the local government's efforts to comply with applicable environmental requirements. Measures of a small local government's good faith include:

- prompt self-disclosure of known violations;
- attempts to comply or a request for compliance assistance prior to the initiation of an enforcement response;
- willingness to participate in a comprehensive compliance evaluation;
- prompt correction of known violations;
- willingness to remediate harm to public health, welfare, or the environment;
- readiness to enter into a written and enforceable compliance agreement establishing a schedule to correct all of its violations as expeditiously as practicable in order of risk-



based priority, or to enter into a written and enforceable agreement establishing a schedule to correct all *known* violations as expeditiously as practicable in order of risk-based priority and to develop and implement an EMS for all of its governmental operations; and

- adherence to the terms of the agreement and to the schedule.

**F. What is the scope of compliance evaluation and assistance a state should offer?**

EPA intends this policy to encourage states to offer local governments comprehensive compliance assistance; that is assistance intended to ensure compliance with all environmental statutes and regulations that apply to the small local government's municipal operations.

Accordingly, a state's actions under the policy should promote an evaluation, performed by qualified personnel, of the small local government's compliance status with respect to all applicable environmental requirements. EPA acknowledges that a comprehensive evaluation becomes more difficult to perform and requires more state resources as the size of the local government increases and as the local government offers more services to its residents. For this reason, the policy will allow "fenceline" projects at local governments that have between 3,301 and 10,000 permanent residents if the state applies a capacity test consistent with the criteria described in part D of this policy and determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance. A fenceline project is one that limits its scope to those activities conducted within a subset of the local government's operations.

A state's assessment of a local government's compliance status should include:

- a comprehensive evaluation of compliance with every applicable environmental requirement at all of the small local government's municipal operations (*see, Profile of Local Government Operations*, EPA 310-R-001, [www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/government.html](http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/government.html); or the Local Government Environmental Assistance Network, [www.lgean.org](http://www.lgean.org)) or, in the case of a local government with between 3,301 and 10,000 permanent residents that qualifies for participation after application of the state's capacity test, a comprehensive evaluation of compliance with every environmental requirement that applies within the fenceline of a defined subset of the local government's operations;
- the local government's current and anticipated future noncompliance with those requirements:
- the comparative risk to public health, welfare, or the environment of each current and anticipated future noncompliance; and
- the local government's compliance options.

In addition, EPA recommends that the process developed by the state include consideration of regionalization and restructuring as compliance alternatives. In the case of fenceline projects, the state should consider if compliance benefits can be achieved by consolidating staff and processes of the designated operations with other governmental operations within the local government. The state's process should also include consideration of the impact of promulgated regulations scheduled to become effective in the future.

This policy is also intended to encourage states to provide participating local governments incentives to develop and implement environmental management systems (EMSs).

The EMS aspects of this policy are discussed in part I, below.

### **G. How should a small local government set priorities for addressing violations?**

States seeking EPA's deference should require small local governments to correct any identified violations of environmental regulations as soon as possible, taking into consideration the local government's technical, managerial, and financial capacities, and the state's ability to assist in strengthening those capacities. A small local government should address all of its violations in order of risk-based priority.<sup>3</sup> While information regarding assessment of environmental risks is available from EPA's National Center for Environmental Assessment at [www.epa.gov/ncea/ecologic.htm](http://www.epa.gov/ncea/ecologic.htm), the Agency expects that the comparative risk between violations will, in most instances, be apparent. For example, violations presenting a risk of ingestion or inhalation of, or contact exposure to, acute toxins must be a local government's highest priority for remediation and correction. Any identified violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment is to be addressed immediately in a manner that abates the endangerment or harm and reduces the threat. Activities necessary to abate the endangerment or harm and reduce the threat posed by such violations or circumstances are not to be delayed while the state and small local government establish and implement the process for assigning priorities for correcting other violations.

### **H. How can the state ensure prompt correction of violations?**

If the small local government cannot correct all of its violations within 180 days of the

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<sup>3</sup> EPA does not intend that local governments should be permitted to delay addressing low-risk violations that can be easily and quickly corrected without impeding progress on long-term compliance efforts undertaken to address high-risk violations.

state's commencement of compliance assistance to the local government, the state and the local government should, within 180 days of the state's commencement of compliance assistance to the local government, enter into and begin implementing a written and enforceable compliance agreement incorporating a schedule<sup>4</sup> that:

- establishes a specified period for correcting all outstanding violations in order of risk-based priority;<sup>5</sup>
- incorporates interim milestones that demonstrate reasonable progress toward compliance;
- contains provisions to ensure continued compliance with all environmental requirements with which the local government is in compliance at the time the agreement is entered; and
- incorporates provisions, where they would be applicable to the small local government, to ensure future compliance with any additional already promulgated environmental requirements that will become effective after the agreement is signed.

Consultation with EPA during the drafting of a compliance agreement and schedule and the forwarding of final compliance agreements and schedules to EPA are recommended to ensure appropriate coordination between the state and EPA.

### **I. What is required of a small local government that elects to address its noncompliance by developing and implementing an environmental management system?**

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<sup>4</sup> The agreement entered into by the local government and the state may not unilaterally alter or supersede a local government's obligations under existing federal administrative orders or federal judicial consent decrees.

<sup>5</sup> States may allow weighing of unique local concerns and characteristics, but the process should be sufficiently standardized and objective that an impartial third person using the same process and the same facts would not reach significantly different results. Public notification and public participation are an important part of the priority setting process.

Small local governments that learn of environmental violations as a result of the state's inspection of some subset of the small local government's operations may address their noncompliance by entering into a written and enforceable agreement establishing a schedule to: 1) correct the violations discovered by the state; *and* 2) develop and implement an environmental management system for all of its governmental operations. Local governments with between 3,301 and 10,000 permanent residents that the state has determined eligible to participate under the policy on a fenceline basis, may develop and implement an EMS for operations within the designated fenceline. The local government must enter into such an agreement with the state not later than 180 days after the state notifies the local government of the violations discovered during the inspection. The local government must either correct those violations within the same 180 days or include, as part of the EMS agreement it enters into with the state, a written and enforceable agreement that establishes a schedule to correct the violations in accordance with the usual terms of this policy.

As part of its schedule, the EMS agreement will include a deadline, not later than one year after entry into the agreement, for the local government's submission to the state of its EMS manual (*see* element 9, below), and a commitment to ensure the performance of an EMS audit not less than one year and not more than three years after the submission of its EMS manual (*see* element 16, below). The EMS manual must contain policies, procedures, and standards explaining and showing how the small local government's EMS conforms to and will accomplish these essential elements of an EMS:

- 1. Environmental policy**– The local government must develop a statement of its commitment to environmental excellence and use this statement as a framework for

planning and action.

2. **Environmental aspects**– The local government must identify which of its activities, products, and services have impacts on the environment and what those impacts are.
3. **Legal and other requirements**-- The local government must identify the environmental laws and regulations that apply to its operations.
4. **Objectives and targets**– The local government must establish goals for its operations that are consistent with its environmental policy , that will eliminate the gap between the local government’s current procedures and an accepted EMS framework, and that will reduce the environmental impacts of its operations.
5. **Environmental management program**– The local government must plan specific actions that will achieve its objectives and targets.
6. **Structure and responsibility**– The local government will establish roles and responsibilities for staff and management to implement the environmental management system, and provide adequate resources.
7. **Training, awareness and competence**– The local government will have a plan to ensure its employees are trained and capable of carrying out their environmental responsibilities.
8. **Communication**– The local government will establish a process for internal and external communications on environmental management issues.
9. **EMS documentation**– The local government will maintain information both on its environmental management system and necessary for its operation. As part of this effort, the local government prepare an EMS manual that contains the policies, procedures, and standards explaining and showing how the local government’s EMS conforms to and will

accomplish the essential EMS elements. In accordance with the schedule established by its EMS agreement, and in no event later than one year after entering into the EMS agreement, the local government will submit a copy of its EMS manual to the state as proof that the local government has developed an EMS.

10. **Document control**– The local government will establish a system to ensure effective management of documents related to the EMS and to environmental activities.
11. **Operational control**– The local government will establish a system to identify, plan, and manage its operations consistent with its objectives and targets.
12. **Emergency preparedness and response**– The local government will identify potential emergencies with environmental impacts and develop procedures for preventing them and for responding to them if unprevented.
13. **Monitoring and measurement**– The local government will monitor key EMS activities and track performance. One periodic measure will be an assessment of compliance with legal requirements.
14. **Nonconformance and corrective and preventative action**– The local government will identify and correct deviations from its EMS, and take actions to prevent their recurrence.
15. **Records**– The local government will maintain and manage records of EMS performance.
16. **EMS audit**– Not less than one year, and not more than three years after the local government submits its EMS manual to the state, the state, or an independent third party approved by the state, will conduct an EMS audit to confirm that a local government has been and is continuing to implement its EMS.
17. **Management review**– The local government must provide for periodic review of its

EMS by local government management, with the goal of continual improvement of both the system and environmental performance.

A fuller explanation of these 17 essential elements and of the EMS process can be found in *Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations* (EPA Document Number EPA 832-B-01-001; available electronically at [www.epa.gov/owm/iso14001/ems2001final.pdf](http://www.epa.gov/owm/iso14001/ems2001final.pdf)). Additional guidance and information regarding how to obtain assistance from a local EMS resource center can be found at [www.peercenter.net](http://www.peercenter.net).

During the development and implementation of its EMS, the small local government may discover violations that were unknown to it at the time of its entry into the EMS agreement with the state. Such violations must be disclosed to the state as required by regulations or in accordance with EPA self-disclosure policies. The small local government and the state may agree to modify the terms of the agreement and schedule to incorporate correction of these violations. The small local government and the state may also consider discovery of additional violations a separate event that can be resolved in any manner consistent with the terms of this policy and EPA enforcement policies and guidelines. An assessment of whether or not the local government has corrected all discovered violations as expeditiously as practicable in order of risk-based priority should be part of the EMS audit.

#### **J. What are the limits on EPA deference?**

EPA reserves all of its enforcement authorities. EPA will generally defer to a state's exercise of its enforcement discretion in accordance with this policy, except that EPA may require immediate with respect to any violation or circumstance that may present an imminent



and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment.<sup>6</sup>

The *Small Local Governments Compliance Assistance Policy* does not apply if, in EPA's judgment:

- a state's small local government environmental compliance assistance program process fails to satisfy the adequacy criteria stated above; or
- a state's application of its small local government environmental compliance assistance program process fails, in a specific case, to provide adequate protection to public health and the environment because it neither requires nor results in reasonable progress toward either achievement of environmental compliance or implementation of an adequate EMS by a date certain.

Where EPA determines that this policy does not apply, and where EPA elects to exercise its enforcement discretion, other EPA enforcement policies remain applicable. The state's and EPA's options in these circumstances include discretion to take or not take formal enforcement action in light of factual, equitable, or local government capacity considerations with respect to violations that had been identified during compliance assistance and were not corrected. Neither the state's actions in providing, nor in failing to provide, compliance assistance shall constitute a legal defense in any enforcement action. However, a local government's good faith efforts to correct violations during compliance assistance may be considered a mitigating factor in

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<sup>6</sup> EPA will regard as a matter of national significance any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment that is left unaddressed by a small local government participating in a state environmental compliance assistance program. Such circumstances require consultation with or the concurrence of, as appropriate, the Assistant Administrator for Enforcement and Compliance Assurance or his or her delegatee before initiation of an EPA enforcement response.

determining the appropriate enforcement response or penalty in subsequent enforcement actions.

Nothing in this policy is intended to release a state from any obligations to supply EPA with required routinely collected and reported information. As described above, states should provide EPA with lists of participating small local governments and copies of final compliance agreements and schedules. States should also give EPA immediate notice upon discovery of a violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents serious threats to, public health, welfare, or the environment.

This policy has no effect on the existing authority of citizens to initiate a legal action against a local government alleging environmental violations.

This policy sets forth factors for consideration that will guide the Agency in its exercise of enforcement discretion. It states the Agency's views as to how the Agency intends to allocate and structure enforcement resources. The policy is not final agency action, and is intended as guidance only. This policy is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.