

EPA's Small Local Governments Compliance Assistance Policy

Background and Purpose

- The Policy promotes environmental compliance among small local governments by providing them with special incentives. EPA will generally defer to a state's decision to reduce or waive the normal noncompliance penalty for a small local government that either commits to (and subsequently achieves) compliance with all of the environmental requirements that apply to its governmental operations, or commits to correct all of its known violations and to develop (and subsequently implements) an environmental management system (EMS) for its governmental operations.
- EPA wants to encourage small local governments to learn about their environmental obligations and develop the technical, managerial, and financial capacity necessary to achieve and sustain comprehensive environmental compliance.

Effective Date and Citation

- The Policy became effective upon its publication at 69 FR 31278 (June 2, 2004). The Policy updates and supercedes the *Policy on Flexible State Enforcement Responses to Small Community Violations* (the *Small Communities Policy*).

Who Qualifies to Use this Policy

- For the purposes of this Policy, a small local government is a unit of general purpose local government, defined in a state's constitution and laws, that
 - ▶ has 3,300 or fewer permanent residents; or
 - ▶ has between 3,301 and 10,000 permanent residents -- and the state has applied a capacity test and determined the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance.

How to Qualify for Penalty Reduction or Waiver

- EPA will generally defer to a state's decision to reduce or waive the usual noncompliance penalty if within 180 days of the commencement of compliance assistance from the state:
 - ▶ The small local government achieves comprehensive compliance at all of its governmental operations; or
 - ▶ The small local government enters into an enforceable agreement that establishes a schedule for the small local government to achieve comprehensive compliance at all of its governmental operations.
- ▶ EPA will generally defer to a state's decision to reduce or waive the usual noncompliance penalty if within 180 days of being notified of violations the small local government enters into an enforceable agreement that establishes a schedule for the small local government to correct all known violations and to develop and implement an EMS for its governmental operations (the EMS option).

- ▶ EPA will generally defer to a state’s decision to reduce or waive the usual noncompliance penalty if a qualified government with between 3,301 and 10,000 permanent residents enters into an enforceable agreement either to achieve comprehensive compliance at a subset of its governmental operations or to correct all known violations and to develop and implement an EMS for a subset of its governmental operations (the “fenceline” option).
- ▶ The Policy does not apply to a small local government’s criminal violations.
- ▶ Please see the actual Policy for additional information regarding the eligibility of local governments for penalty reductions and waivers as well as limitations on qualifying actions.

Major Changes to the *Small Communities Policy*

- Eligible entities will now be units of general purpose local government defined in a state’s constitution and statutes. This change eliminates possible confusion associated with the prior term “small communities.”
- The two-tiers of eligibility – local governments with no more than 3,300 permanent residents, and local governments with more than 3,300 but no more than 10,000 permanent residents if the state performs a conforming capacity test and determines the local government is unlikely to achieve and sustain compliance without the state’s assistance – replace the flat 2,500 cap on the population of eligible communities.
- The new policy adds an EMS option – EPA will generally defer to a state’s decision to reduce or waive the usual noncompliance penalty if the small local government corrects all known violations and develops and implements an EMS for its governmental operations
- For local governments with between 3,301 and 10,000 permanent residents, the new policy adds a “fenceline” option – EPA will generally defer to a state’s decision to reduce or waive the usual noncompliance penalty for a comprehensive compliance effort or an EMS a small local government completes at a subset of its governmental operations.

Implementation of the Policy

- This policy establishes parameters for state action where the state has primary authority to implement an environmental program or enforce a regulation. Where EPA directly implements a regulatory program or exercises primary enforcement authority with respect to an environmental regulation, the EPA Region is the state for the purposes of this policy. EPA Regions should consult with the EPA Headquarters’ Office of Regulatory Enforcement prior to implementing the policy.

For More Information contact Ken Harmon at (202) 564-7049, or visit <http://www.epa.gov/compliance/incentives/smallcommunity/index.html>