

that has primacy or has been authorized to implement a Federal program.

DATES: The Agency requests comments on today's proposal. Comments must be received or post-marked by midnight January 2, 2004. Comments received after this date may not be considered in decision making on the proposed policy.

ADDRESSES: Send written comments (in triplicate, if possible) to: the Docket Clerk, U.S. Environmental Protection Agency Enforcement and Compliance Docket and Information Center, Mail Code: 2201T, Docket Number EC-P-2001-003, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Please use a font size no smaller than 12. Comments may also be sent electronically to docket.oeca@epa.gov, or faxed to (202) 566-1511. Attach electronic comments as an ASCII (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number EC-P-2001-003 on your document. In person, deliver comments to the Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., EPA West, Room B133, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth Harmon, telephone (202)564-7049; e-mail harmon.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and History

EPA's enforcement response policies generally provide for initiation of an enforcement action and assessment of standard penalties (which can be adjusted downward on the basis of the violator's inability to pay) if a local government entity is discovered to have violated environmental regulations. In 1994, EPA began informal discussions with the States of Oregon and Idaho, later joined by the State of Nebraska, centered on those States' planned use of enforcement discretion with respect to small community violators. These States noted that small communities may have more difficulty complying with environmental regulations than larger communities do. Small communities that lack personnel trained in environmental management may be unaware of environmental requirements. Once informed of their environmental noncompliance, small communities may not know how to correct their problems. Because small communities have a smaller tax base and a smaller pool of ratepayers, their residents often must pay higher per household costs for environmental

compliance. Oregon, Idaho, and Nebraska sought assurances that EPA would defer to a State's exercise of enforcement discretion to reduce or waive the normal noncompliance penalty where a State determines that a small community violator is working diligently in good faith to identify and correct its noncompliance.

In 1995, EPA responded by issuing the *Policy on Flexible State Enforcement Responses to Small Community Violations* ("the *Small Communities Policy*"). The *Small Communities Policy* established parameters within which EPA encourages States to provide incentives for small communities to seek State assistance in identifying their environmental problems, developing a priority-based schedule for returning to full comprehensive environmental compliance, and building the technical, managerial, and financial capacity needed to achieve and sustain compliance.

II. Overview of the Small Communities Policy

EPA's 1995 *Small Communities Policy* gives States¹ considerable freedom to tailor small community environmental compliance assistance practices or programs that meet specific local needs. EPA's deference on penalty reductions and waivers under the *Small Communities Policy* is generally restricted to agreements States enter into with communities with no more than 2,500 permanent residents. These communities must be working diligently in good faith to achieve and sustain *comprehensive* environmental compliance, *i.e.*, compliance with every environmental requirement to which their government operations are subject. If a small community cannot achieve comprehensive compliance within 180 days of the State's commencement of compliance assistance to the community, within that same 180 days, the community must enter into a written and enforceable agreement with the State that establishes a schedule for addressing and correcting all of its environmental violations as soon as practicable. A State that seeks EPA's deference to its decision to reduce a small community's noncompliance penalties must have adequate processes for:

- Responding quickly to requests for compliance assistance;

- Selecting communities to participate in the State's compliance assistance program;
- Assessing a community's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring prompt correction of violations

The Agency reserves all of its enforcement authorities, including its discretion to initiate an enforcement action to address 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 or the environment.

Deference under the *Small Communities Policy* is not warranted if, in EPA's judgment, a State's program to reduce or waive small communities' noncompliance penalties in exchange for comprehensive environmental compliance fails to satisfy the conditions of the *Small Communities Policy*. Neither is deference under the *Small Communities Policy* warranted if, in EPA's judgment, a State's application of its program to reduce or waive small communities' noncompliance penalties in exchange for comprehensive environmental compliance fails to provide, in a specific case, adequate protection to human health and the environment because that application neither requires nor results in reasonable progress toward, and achievement of, environmental compliance by a date certain.

III. Differences Among the Self-Disclosure Policies

In addition to the *Small Communities Policy*, EPA has issued *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (the *Audit Policy*) and the *Small Business Compliance Policy* (the *Small Business Policy*), both of which were last revised in April of 2000. These policies provide penalty relief to regulated entities who, upon discovering their violations, promptly disclose them to EPA and promptly return to compliance. Although the *Small Communities Policy* is often grouped with the *Audit Policy* and the *Small Business Policy* under the shared term "self-disclosure policies," it differs in significant ways. The *Audit Policy* and the *Small Business Policy* apply only to violations discovered outside the scope of a compliance assessment required by statute or regulation. The *Small Communities Policy* can apply to a violation no matter how discovered. It can apply to violations discovered

¹ "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.