

those violations that are voluntarily discovered.

- Projects under the *Small Communities Policy* must result in an assessment of the local government's compliance with all applicable environmental requirements, even if the project is confined within the fenceline of a subset of the local government's operations.

- The *Small Communities Policy* gives local governments the flexibility to prioritize among their violations and develop a schedule to address all of their noncompliance as expeditiously as practicable in order of risk-based priority.

D. Environmental Management Systems

An environmental management system (EMS) is an individualized internal management system designed, documented, and implemented to identify and manage the environmental impacts of an entity's operations. Developing and implementing an EMS is an effective way for a local government to identify the environmental aspects of its operations and manage its environmental responsibilities for continual improvement. EPA noted the similarities between the goals of the *Small Communities Policy* and the goals of an EMS in its January 23, 2002, **Federal Register** notice. Both the policy and an EMS establish a mechanism for moving a small local government toward sustained environmental compliance. In the **Federal Register** notice, the Agency noted that the primary difference between the two is the policy's focus on discovering and addressing all of a local governments' environmental noncompliance and an EMS's focus on implementing a system that provides for a local government's ongoing management of all its environmental responsibilities. EPA indicated in the **Federal Register** notice that if a small local government receiving comprehensive environmental compliance assistance from the State were to develop and implement an EMS as part of its strategy to address its noncompliance, the local government should incorporate its EMS activities into the written and enforceable agreement and the schedule required by the policy.

All commenters on this point acknowledged the value of an EMS, but urged that development and implementation of an EMS, and the associated resource demands, not be made a condition of EPA deference.

After considering the comments, EPA's has decided the policy, while not making EMSs mandatory, should

provide local governments an incentive to develop and implement an environmental management system. Accordingly, the proposed revisions to the *Small Communities Policy* create an EMS option that will be available to small local governments that learn of environmental noncompliance as a result of a State's inspection of some subset of the small local government's operations. The revised policy would apply to small local governments that address their environmental noncompliance by entering into a written and enforceable agreement with the State establishing a schedule for the local government to: (1) Correct, as expeditiously as practicable in order of risk-based priority, the violations the State discovered during the inspection; and (2) develop and implement an environmental management system for all of its governmental operations. Local governments with populations between 3,301 and 10,000 that the State has determined eligible to participate under the policy may develop and implement an EMS applicable within a fenceline that incorporates the operation at which the violations were discovered. Not later than 180 days after the State notifies the local government of the violations discovered during the inspection, the local government must enter into an enforceable agreement that establishes a schedule for correcting the violations, and for developing and implementing an EMS for its governmental operations. If the local government corrects the violations before the 180 days have passed, the written and enforceable agreement it enters into with the State can contain only provisions related to developing and implementing its EMS. In accordance with the schedule established by the EMS agreement, but in no event later than one year after entering into the EMS agreement with the State, a local government would demonstrate it has developed an EMS by producing and submitting to the State an EMS manual documenting how it will accomplish the essential elements of an environmental management system. 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, would conduct an EMS audit to confirm that a local government has been implementing, and is continuing to implement, its EMS. This process is discussed more fully in part J of the policy.

EPA proposes the EMS option as an alternative to the process established by the prior *Small Communities Policy*.

That policy encourages small local governments to ask the State to perform a comprehensive environmental evaluation of *all* the local government's operations, 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, and correct all of its violations in accordance with that schedule.

The EMS option would establish a process in which the small local government would, as expeditiously as practicable and in order of risk-based priority, correct all of the violations discovered by the State during its inspection of a *subset* of the local government's operations. In committing to develop and implement an EMS, the *small local government* would be responsible for ensuring performance of the comprehensive analysis of the environmental aspects of all of its operations (or in the case of a local government approved for a fenceline project, all of its operations within the fenceline). If at any point during the development and implementation of its EMS a small local government discovers additional noncompliance, it must disclose these violations to the State as required by laws and regulations or in accordance with EPA's self-disclosure policies. The State and the small local government may then amend the terms of their agreement under the policy's EMS option to incorporate a schedule for correction of the newly discovered violations. The State and the small local government may, however, choose to address any noncompliance discovered after the entry of the EMS option agreement in any manner consistent with this policy and other EPA enforcement policies and guidelines.

Local governments that wish to develop and implement an EMS should consult the EPA-sponsored Public Entity EMS Resource Center (PEER Center) at www.peercenter.net, and the nearest of its affiliated Local Resource Centers. The PEER Center provides case studies of completed local government EMS projects, process information, and guidance to local governments who wish to develop and implement an environmental management system. EPA will continue to support efforts to facilitate the development of EMS's by small local governments, will work to ensure State programs have access to EPA EMS tools, services, and funding, and will recommend that local governments that participate in State programs implementing the policy be given priority access to the Local Resource Centers.