

costs from unforeseen environmental problems. Other benefits to participating communities may include recognition from EPA or their states, priority access to EPA compliance assistance tools and services, or priority access to EPA-funded compliance grants. There are also indications that local governments that undertake a comprehensive environmental compliance evaluation and implement a program to ensure sustained compliance can improve their bond ratings and reduce their insurance premiums. Commenters generally approved of these incentives and stressed the importance of public recognition both as a means of rewarding local governments for their efforts to achieve and sustain comprehensive environmental compliance and as a way to promote interest among other local governments.

To the extent yearly budgets allow, EPA's Office of Compliance will provide pilot grants to a limited number of States to help offset the resource demands of establishing a program to provide comprehensive environmental compliance assistance to small local governments. EPA will continue to work to provide and enhance other incentives for States. EPA will also continue to develop and expand the various local government incentives discussed above. As more tools and services are developed, and as funding for local government recognition becomes available, EPA will work to ensure coordination with State compliance assistance programs.

C. Application of the Policy to Tribes

EPA received no comments on whether or not the policy should create a distinction between States and Tribes that have received EPA approval for treatment as States. As a result, the proposed revised policy leaves the policy's effects on Tribal governments unchanged.

VIII. Other Comments

Commenters also suggested that the policy extend eligibility to non-governmental water systems that supply drinking water to a population equivalent to the population of a small local government, and to governmental organizations owned by a consortium of local governments that individually meet the policy's definition of small local government, but whose aggregated populations would exceed the policy's population cap. EPA does not propose making either of these suggested changes. Non-governmental water systems, even those serving small populations, represent themselves as having the technical, managerial, and

financial capacity for compliant operation at the time they contract to offer service at an agreed-upon rate. Noncomplying non-governmental water systems can obtain penalty relief if they disclose and correct violations in accordance with the *Audit Policy* or the *Small Business Policy*. Either of those policies may be a better option than the *Small Local Governments Compliance Assistance Policy* for resolving environmental concerns at a single facility that engages in only one operation. Additionally, unique aspects of the *Small Local Governments Compliance Assistance Policy* may not be appropriate (e.g., including violations discovered by the regulator) or applicable (e.g., performing comprehensive environmental compliance evaluations of several operations; building technical, managerial, and financial capacity; and developing a schedule for addressing all violations in order of risk-based priority) to non-governmental water systems.

With respect to governmental organizations owned by a consortium of small local governments, EPA notes that small local governments pool their resources in this fashion to ensure the resulting organization will have the technical, managerial, and financial capacity needed to perform its intended functions. Determining the organization's eligibility on the basis of the populations of the individual local governments misstates the size of the tax base and rate base that support the organization. It also fails to consider that an organization that can meet the needs of the entire population served must necessarily be greater in size and sophistication than that of a similar organization that provides services only to a single small local government.

A common sentiment among commenters was a conviction that EPA should maintain the policy's considerable flexibility. Commenters thought it important that the policy establish outer bounds within which States have latitude to design a comprehensive environmental compliance assistance program tailored to the particular needs of their small local governments. In many respects, the proposed revised policy provides States more flexibility than the 1995 policy. Local governments with populations of up to 3,300 are defined as "small" and receive all of the policy's benefits without first demonstrating need. Local governments with populations between 3,301 and 10,000 can also receive all of the policy's benefits if a State's consistently applied capacity test determines that the local

government lacks the technical, managerial, or financial capacity to achieve compliance without the State's assistance. In addition, these larger communities can participate on a "fenceline" basis to reduce the resource demands on both the State and the local government. The proposed revisions also increase flexibility by providing the EMS option to States and small local governments that wish to pursue this alternative. One way in which the proposed revision may arguably have decreased the States' flexibility under the policy is in replacing the former term "small community" with the term "local government".

IX. Possible EPA Implementation of a Federal Policy Similar to the *Small Local Governments Compliance Assistance Policy*

EPA takes the lead in providing compliance assistance to small local governments and initiating enforcement responses to their violations when the Agency is responsible for directly implementing a program, where EPA has primary enforcement authority within a jurisdiction, or where EPA takes action after consulting with the primacy or authorized State. EPA could develop a Federal policy similar to the *Small Local Governments Compliance Assistance Policy* as a tool EPA Regions could elect to use, at their discretion, in appropriate circumstances. If EPA were to adopt a similar policy, the Agency would reserve the right to determine the circumstances in which such a Federal policy would apply to the violations of small local governments. For example, EPA could choose to implement the policy only when, consistent with the Agency's priority-setting process, the Agency decides to deploy compliance assurance and enforcement resources to address small local government noncompliance that is a significant contributor to impaired waters, as part of a geographic initiative, or as part of an integrated strategy. Although EPA did not raise this issue in its January 23, 2002, **Federal Register** notice, internal Agency discussions identified the issue as one for possible clarification. EPA now seeks comment on whether and how the Agency could implement a Federal policy similar to the proposed *Small Local Governments Compliance Assistance Policy* in its compliance assistance and enforcement activities.