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Small Local Governments Compliance Assistance Policy

A. Introduction and Purpose

The *Small Local Governments Compliance Assistance Policy* is intended to promote comprehensive environmental compliance among small local governments by providing incentives for them to make use of State compliance assistance programs, environmental audits, environmental management systems (EMS), or to participate in any activities that may increase small local governments' understanding of their environmental requirements and how to comply with those requirements. The policy accomplishes this by authorizing States¹ to reduce or waive, in certain circumstances, the civil penalty EPA guidance would normally require States to assess for the small local government's environmental violations, and to use enforcement discretion to provide compliance incentives for small local governments. 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.² 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. Background

This policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

C. Who Is Eligible for Compliance Assistance Under This Policy?

This policy applies to State comprehensive environmental compliance assistance activity related to facilities owned and operated by small local governments. A local government is defined as an organized unit of local government, authorized in a State's constitution and statutes, and established to provide general government to a county, municipality, city, town, township, village, or borough. A small local government is a local government that provides public services to 3,300 or fewer permanent residents. A local government that supplies public 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 (as 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 programs), this document supersedes those policies.

D. 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, all violations discovered by the State during an inspection of some subset of the local government's operations in order of risk-based priority; 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.

¹ This policy will also apply to the actions of territories and to the actions of Native American Tribes where conditions have been met for EPA to treat the Tribe as a State.

² 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 Ecological Assessment at www.epa.gov/ncea/ecologic.htm will help States and local governments identify which local environmental problems pose the greatest risk to human health, ecosystem health, and quality of life.