

E. How Should a State Select Participating Local Governments?

EPA intends this policy to apply only to small local governments unable to satisfy all applicable environmental mandates without assistance from the State. For the purposes of this policy, local governments with 3,300 or fewer permanent residents are assumed to need the State's compliance assistance. Local governments whose permanent residents number between 3,301 and 10,000 can qualify to receive the benefits of the policy if the State determines 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. To make this determination, a state must apply a capacity test that measures such indicators as:

- The local government finds it difficult to comply with routine reporting requirements (e.g., the local government has submitted less than 90 percent of the required drinking water monitoring reports in the past year);
- The local government has no operation and maintenance plan for its utility operations, or has an operation and maintenance plan that is not routinely followed (e.g., maintenance logs are not regularly updated, are incomplete, or are not kept at all);
- The required drinking water sanitary survey has not been scheduled, or the sanitary survey has been performed, but the local government has not addressed all identified significant deficiencies;
- Utility operators are untrained or uncertified, or staffing of certified operators is inadequate to meet the local government's needs;
- Utility systems were installed without State oversight and approval, or began operating without receiving final operational approval from the State;
- Rights essential to the provision of public services are not clearly established and documented by contract (e.g., the local government has no contract with the source from which it obtains its drinking water, or for the disposal of its solid waste);
- The local government does not have current and approved by-laws, ordinances, or tariffs in place with respect to each of its public utility operations;
- There is no formal organizational structure for operation and maintenance of the local government's public utilities clearly identifying the owner, the operator, and the staff and their responsibilities;

- Either there are no written job descriptions clearly defining the responsibilities of public utility staff, or the staff is unfamiliar with such documents;

- Staff is untrained or inadequately trained;
- Written policies covering personnel, customer service, and risk management either do not exist or are routinely ignored;
- Lines of communication between public utility staff and agencies or private sector staff that can provide assistance are inadequate or nonexistent;
- The local government does not follow standard accounting principles in the funding of its public utilities, and either has not been audited or was issued an adverse opinion following an audit;
- The local government either does not have an annual budget for operation of a public utility or has an annual budget that is inadequate to meet the demands of operation, maintenance, and environmental compliance;
- Public utility rates do not include all users or have not been recently reviewed to examine operational sustainability and viability;
- A significant percentage of accounts (either payable or receivable) are chronically delinquent;
- Periodic budget reports and balance sheets are either not produced, or, if produced, have not been approved;
- The local government's tax base is inadequate to support needed environmental expenditures; or
- There are demographic factors that present quantifiable negative impacts on the local government's capacity.

The State must document the capacity test it applied and all findings it made to support its determination of incapacity, and maintain that documentation in records accessible for EPA review.

EPA's evaluation of the appropriateness of a State's small local government comprehensive environmental compliance assistance program will depend in part on whether the State uses adequate measures of technical, managerial, and financial capacity to ensure that only those local governments that truly need assistance were assessed noncompliance penalties that were reduced or waived beyond the extent normally allowed by EPA enforcement policies and guidance.

Not less than quarterly, a State should provide EPA with a list of local governments participating in its small local government environmental compliance assistance program to ensure proper State and Federal

coordination on enforcement activity. In addition to any records related to a finding of a local government's incapacity, a State must keep records of contacts between the State and participating local governments, results of compliance assessments, actions taken by the local government to achieve compliance, any written compliance agreements and schedules, and any assessments of a local government's adherence to the terms of its compliance agreement and schedule should be kept in the State's files accessible for review by EPA.

F. How Should a State Assess a Local Government's Good Faith?

In considering whether a State has established and is following an adequate process for assessing a small local government's good faith, EPA generally will look at such factors as the participating local government's candor in contacts with State regulators and the local government's efforts to comply with applicable environmental requirements. Measures of a small local government's good faith include:

- Prompt self-disclosure of known violations;
- Attempts to comply or a request for compliance assistance prior to the initiation of an enforcement response;
- Willingness to participate in a comprehensive compliance evaluation;
- Prompt correction of known violations;
- Willingness to remediate harm to public health, welfare, or the environment;
- Readiness to 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, or to enter into a written and enforceable agreement establishing a schedule to correct all *known* violations as expeditiously as practicable in order of risk-based priority and to develop and implement an EMS for all of its governmental operations; and
- Adherence to the terms of the agreement and to the schedule.

G. What Is the Scope of Compliance Evaluation and Assistance a State Should Offer?

EPA intends this policy to encourage States to offer local governments comprehensive compliance assistance. Accordingly, a State's actions under the policy should promote an evaluation, performed by qualified personnel, of the small local government's compliance status with respect to all applicable environmental requirements. EPA acknowledges that a comprehensive