

evaluation becomes more difficult to perform and requires more State resources as the size of the local government increases and as the local government offers more services to its residents. For this reason, the policy will allow “fenceline” projects at local governments with between 3,301 and 10,000 permanent residents if the State applies a capacity test consistent with the criteria described in part E of this policy and 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. A fenceline project is one that limits its scope to those activities conducted within a subset of the local government’s operations.

A State’s assessment of a local government’s compliance status should include:

- A comprehensive evaluation of compliance with every applicable environmental requirement at all of the small local government’s municipal operations (see, *Profile of Local Government Operations*, EPA 310–R–001, www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/government.html; or the Local Government Environmental Assistance Network, www.lgean.org) or, in the case of local governments with between 3,301 and 10,000 permanent residents that qualifies for participation after application of the State’s capacity test, a comprehensive evaluation of compliance with every applicable environmental requirement within the fenceline of a defined subset of the local government’s operations;

- The local government’s current and anticipated future noncompliance with those requirements;

- The comparative risk to public health, welfare, or the environment of each current and anticipated future noncompliance; and

- The local government’s compliance options.

In addition, EPA recommends that the process developed by the State include consideration of regionalization and restructuring as compliance alternatives. In the case of fenceline projects, the State should consider if compliance benefits can be achieved by consolidating staff and processes of the designated operations with other governmental operations within the local government. The State’s process should also include consideration of the impact of promulgated regulations scheduled to become effective in the future.

This policy is also intended to encourage States to provide participating local governments incentives to develop and implement environmental management systems (EMSs). The EMS aspects of this policy are discussed in part J, below.

H. How Should a Small Local Government Set Priorities for Addressing Violations?

States seeking EPA’s deference should require small local governments to correct any identified violations of environmental regulations as soon as possible, taking into consideration the local government’s technical, managerial, and financial capacities, and the State’s ability to assist in strengthening those capacities. A small local government should address all of its violations in order of risk-based priority.³ While information regarding assessment of environmental risks is available from EPA’s National Center for Ecological Assessment at www.epa.gov/ncea/ecologic.htm, the Agency expects that the comparative risk between violations will, in most instances, be apparent. For example, violations presenting a risk of ingestion or inhalation of, or contact exposure to, acute toxins must be a local government’s highest priority for remediation and correction. Any identified 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, welfare, or the environment is to be addressed immediately in a manner that abates the endangerment or harm and reduces the threat. Activities necessary to abate the endangerment or harm and reduce the threat posed by such violations or circumstances are not to be delayed while the State and small local government establish and implement the process for assigning priorities for correcting other violations.

I. How Can the State Ensure Prompt Correction of Violations?

If the small local government cannot correct all of its violations within 180 days of the State’s commencement of compliance assistance to the local government, the State and the local government should, within 180 days of the State’s commencement of compliance assistance to the local government, enter into and begin

implementing a written and enforceable compliance agreement incorporating a schedule⁴ that:

- Establishes a specified period for correcting all outstanding violations in order of risk-based priority;⁵
- Incorporates interim milestones that demonstrate reasonable progress toward compliance;
- Contains provisions to ensure continued compliance with all environmental requirements with which the local government is in compliance at the time the agreement is entered; and
- Incorporates provisions, where they would be applicable to the small local government, to ensure future compliance with any additional already promulgated environmental requirements that will become effective after the agreement is signed.

Consultation with EPA during the drafting of a compliance agreement and schedule and the forwarding of final compliance agreements and schedules to EPA are recommended to ensure appropriate coordination between the State and EPA.

J. What Is Required of a Small Local Government That Elects To Address Its Noncompliance by Developing and Implementing an Environmental Management System?

Small local governments that learn of environmental violations as a result of the state’s inspection of some subset of the small local government’s operations may address their noncompliance by entering into a written and enforceable agreement establishing a schedule to: (1) Correct the violations discovered by the state; and (2) develop and implement an environmental management system for all of its governmental operations. Local governments with between 3,301 and 10,000 permanent residents that the State has determined eligible to participate under the policy on a fenceline basis, may develop and implement an EMS for operations within the designated fenceline. The local government must enter into such an agreement with the State not later than 180 days after the State notifies the local government of the violations discovered during the inspection. The local government must either correct

⁴ Neither a State nor a local government may unilaterally alter or supersede a local government’s obligations under existing Federal administrative orders or federal judicial consent decrees.

⁵ States may allow weighing of unique local concerns and characteristics, but the process should be sufficiently standardized and objective that an impartial third person using the same process and the same facts would not reach significantly different results. Public notification and public participation are an importation part of the priority setting process.

³ EPA does not intend that local governments should be permitted to delay addressing low-risk violations that can be easily and quickly corrected without impeding progress on long-term compliance efforts undertaken to address high-risk violations.