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Authority: 7 U.S.C. 136.

Dated: January 11, 2002.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7131-8]

Flexible State Enforcement Responses to Small Community Violations, EPA Policy and Guidance

AGENCY: Environmental Protection Agency.

ACTION: Policy statement and request for public comment on possible revisions.

SUMMARY: The Environmental Protection Agency (EPA) is evaluating the effectiveness of its 1995 *Policy on Flexible State Enforcement Responses to Small Community Violations* (the Small Communities Policy) and seeks public comment on possible revisions to make the policy more useful and to promote more widespread implementation of the policy among states. Possible revisions include an upward adjustment of the population limit for eligible communities, allowing application to "fence line" projects, and provision of additional incentives for participation. This notice also discusses other potential minor changes. EPA will also consider additional changes that may be suggested by commenters. EPA developed the Small Communities Policy to enhance protection of public health and the environment by encouraging states to help small communities: Identify their environmental problems; develop a priority-based schedule for returning to full, comprehensive environmental compliance; and build the technical, administrative, and financial capacity they need to achieve and sustain environmental compliance. The Small Communities Policy can be downloaded from the Internet at <http://es.epa.gov/oeca/scpolicy.html>.

DATES: EPA requests that interested parties comment on this notice in writing.

Comments must be received by April 23, 2002.

ADDRESSES: Send written comments to: the Docket Clerk, Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC-P-2001-003, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (in triplicate, if possible). Please use a font size no smaller than 12. Comments may also be sent electronically to docket.oeca@epa.gov or faxed to (202) 501-1011. Attach electronic comments as an ASCII (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number EC-P-2001-003 on your document. In person, deliver comments to Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Ariel Rios Building, Room 4033, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 564-2614 or (202) 564-2119. Hours of operation are 8 a.m. through 4 p.m., e.s.t., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Harmon, telephone (202) 564-7049; e-mail harmon.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Explanation of Notice

A. Executive Summary

During 1994, EPA began informal discussions with the states of Oregon and Idaho, (later joined by the state of Nebraska) that centered on those states' planned use of enforcement discretion with respect to small community violators. EPA's enforcement guidelines generally mandate initiation of an enforcement action and assessment of a standard penalty amount (which can be adjusted downward on the basis of the violator's inability to pay) if a local government entity is discovered to have violated environmental regulations. As these states noted, small communities may have more difficulty complying with environmental regulations than larger communities do. Small communities that lack personnel trained in environmental management may be unaware of environmental

requirements. Once informed of an environmental violation, a small community may not know how to correct the problem. Because small communities have a smaller tax base and a smaller pool of ratepayers, their residents often must pay higher per household costs for environmental compliance. Oregon, Idaho, and Nebraska sought assurances EPA would defer to a state's exercise of enforcement discretion to reduce or waive the standard penalty where a state determines that a small community violator is working in diligent good faith to correct its violations.

In 1995, EPA responded by issuing the *Policy on Flexible State Enforcement Responses to Small Community Violations* ("the Small Communities Policy"). The Small Communities Policy established the parameters within which EPA encourages states¹ to provide incentives for small communities to seek state assistance in identifying their environmental problems, developing a priority-based schedule for returning to full comprehensive environmental compliance, and building technical, administrative, and financial capacity to achieve and maintain compliance.

The major findings of EPA's preliminary evaluation of the Small Communities Policy and its implementation are as follows:

- During the past six years, few states have elected to establish programs to provide comprehensive environmental compliance assistance to small communities. At present, only the states of Oregon and Nebraska maintain active programs of this type. In these states, the Small Communities Policy has proved effective for reassuring communities that compliance evaluations performed by the state do not always subject the community to an enforcement action and a requirement that they pay penalties.

- The Oregon and Nebraska programs have provided compliance assistance to more than 250 small communities.

- Many states have not established programs to provide comprehensive compliance assistance to small

¹ The term "state" includes territories of the United States and Indian reservations where EPA has approved the Tribe for treatment as a State.

communities because they believe the Small Communities Policy's population cap of 2,500 is too low. These states say their communities with 2,500 or fewer residents offer only limited and rudimentary public services, lack the administrative capacity to implement a comprehensive compliance effort, and their compliance needs can be adequately met by informal compliance assistance focused on the requirements of individual regulatory programs.

- Many small communities see no benefit to be gained by participating in a state's comprehensive compliance assistance program, as reduction or waiver of the noncompliance penalty is little incentive to a community that, because of its limited financial resources, would not pay a significant penalty in a traditional enforcement action.

In response to these findings and others, EPA is considering a number of revisions to the Small Communities Policy. One possible revision would be to raise the population cap, allowing states to direct comprehensive compliance assistance toward larger (but still small) communities that do offer a variety of public services and do have the capacity to undertake and implement a plan for sustained compliance. The Small Communities Policy could also be revised to permit a comprehensive approach to environmental compliance within the "fence line" of one of a community's operations, rather than requiring comprehensive evaluation of all of a community's operations. EPA has also worked to reduce the resource burdens associated with establishing and participating in comprehensive environmental compliance assistance programs and is considering a number of incentives it can offer to both states and small communities. These options and others are discussed later in this Notice.

B. Overview of the Small Communities Policy

EPA's 1995 Small Communities Policy gives states considerable freedom to tailor small community environmental compliance assistance practices or programs that meet specific local needs. In general, application of the Small Communities Policy is restricted to communities with a population no larger than 2,500 that are working in diligent good faith to achieve and sustain comprehensive environmental compliance. The Small Communities Policy requires that states offering comprehensive environmental compliance assistance have adequate processes for:

- Responding quickly to requests for compliance assistance;
- Selecting communities to participate in the state's compliance assistance program;
- Assessing a community's good faith and compliance status;
- Establishing priorities for addressing violations; and
- Ensuring prompt correction of violations.

Where a state implements the Small Communities Policy, EPA reserves all of its enforcement authorities, but will generally defer to a state's exercise of its enforcement discretion in accordance with the terms of the Small Communities Policy. EPA, however, reserves its enforcement discretion with respect to any 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 or the environment.

The Small Communities Policy does not apply if, in EPA's judgment, a state's program to offer comprehensive environmental compliance assistance to small communities fails to satisfy the conditions of the Small Communities Policy. The Small Communities Policy does not apply if, in EPA's judgment, a state's application of its small community environmental compliance assistance program fails in a specific case adequately to protect human health and the environment because it neither requires nor results in reasonable progress toward, and achievement of, environmental compliance by a date certain.

C. Relationship of Small Community Policy to Environmental Management Systems

In many respects, the Small Communities Policy promotes an environmental management system (EMS) approach by encouraging small communities to identify their environmental responsibilities and implement management systems that will enable them to sustain compliance. While the Small Communities Policy asks participating small communities to perform a comprehensive assessment of their environmental compliance, the resulting enforceable compliance schedule need only address the violations discovered. A small community that adopts an EMS signals its ongoing commitment to management practices that minimize the likelihood of violations in the future. For this reason, EPA supports states that promote the use of environmental management systems as a component of their programs that offer comprehensive

environmental compliance assistance to small communities. Small communities will be able to use the resources of the PEER Center (*see below*) to assist them in developing an EMS. If a small community develops and implements an EMS as part of its strategy to address its noncompliance, the EMS should be incorporated into the written and enforceable compliance schedule.

D. Differences Among the Self-Disclosure Policies

In addition to the Small Communities Policy, the application of which is expressly limited to small communities, EPA has issued *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the Audit Policy)* and the Small Business Compliance Policy (the Small Business Policy), both of which were last revised in April of 2000. These policies provide penalty relief to violators who promptly disclose their violations to EPA and promptly return to compliance. Although the Small Communities Policy is often grouped with the Audit Policy and the Small Business Policy under the shared term "self-disclosure policies," it is different in significant ways. The Audit Policy and the Small Business Policy apply only to violations voluntarily discovered by the regulated entity, *i.e.*, the violator, not a regulator, discovered the noncompliance, and the violations were not discovered during the performance of a compliance assessment required by statute or regulation. The Small Communities Policy, by contrast, allows inclusion both of violations discovered by the regulator and of violations found during legally required compliance assessments. While the Audit Policy and the Small Business Policy do not provide penalty relief for repeat violations, the Small Communities Policy allows application of the policy to communities with a history of noncompliance if the state determines that the community is acting in good faith. The Audit Policy and the Small Business Policy generally allow disclosing violators 60 days and 90 days, respectively, to correct their violations (the Small Business Policy allows 180 days for corrections if the violator first submits a written schedule, and up to 360 days for corrections if the violator will correct the violations by putting into place pollution prevention measures.) The Small Communities Policy gives communities 180 days to correct violations without a schedule, but, if compliance cannot be achieved within that time, allows communities to enter into a written and enforceable

schedule that will address all of their violations in order of risk-based priority as expeditiously as practicable. Both the Audit Policy and the Small Business Policy focus on the noncompliance disclosed by the violator, and the disclosed violations must be corrected in a timely fashion, but the violator is not asked to conduct voluntary evaluations of its compliance with any other regulatory requirements. For this reason, the most significant difference between the Small Communities Policy and the other self-disclosure policies is the Small Communities Policy's emphasis on performing a compliance evaluation of all of a community's environmental operations and on developing the community's capacity to achieve and sustain comprehensive compliance.

II. Possible Revisions to the Small Communities Policy

EPA has identified three areas of the Small Communities Policy that may have the largest influence on whether or not states and small communities participate in programs that provide comprehensive environmental compliance assistance to small communities: (1) The policy's cap on the population of participating communities; (2) the resource burden on states to establish and implement such a program; and (3) the incentives for participation. These three areas of specific concern will be discussed more fully below. EPA seeks comments from the public on how best to address these specific concerns, on other aspects of the policy identified in the discussion to follow, and on any other issues concerning the Small Communities Policy and its implementation.

A. Possible Revisions To Address Areas of Specific Concern

1. The Population Cap

All stakeholders agree that the Small Communities Policy is valuable for the assurances it provides small communities that a good faith request for help can result in compliance assistance instead of an enforcement action and penalty. Some stakeholders have told EPA that the Small Communities Policy appropriately limits participation to communities with a population of 2,500 or less, as a population cap is necessary to limit delivery of comprehensive environmental compliance assistance to those communities that most need help. Other stakeholders believe the Small Communities Policy is of little use to communities with 2,500 or fewer residents. In rural areas, small community residents may obtain their drinking water from their own wells, capture waste water in their own septic systems, or assume responsibility for disposing of their own solid waste. In more densely populated areas, the residents of small communities may receive public services from the surrounding county or district government rather than from their local small government authority. If a community does not provide a range of public services, it has no need for a program that helps it set priorities and develop a schedule for working toward comprehensive environmental compliance. These stakeholders assert that there are numerous larger (but still small) communities that would enjoy greater benefit from participation in such a program, while advancing the Agency's goal of encouraging small communities to achieve and sustain comprehensive environmental compliance.

If the Agency were to revise the Small Communities Policy to address the

population cap that some see as an impediment to implementation, EPA would have several options.

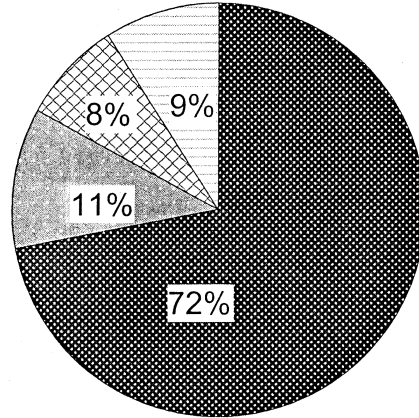
a. Raise the Population Cap

The Small Communities Policy capped a small community's population at 2,500 to be consistent with the Small Town Environmental Planning Act, 42 U.S.C. 6908(f) (October 6, 1992), where Congress defined a "small town" as one "with a population of less than 2,500 individuals." If EPA determines that the Small Communities Policy's population cap of 2,500 bars participation of small communities that could benefit from the policy and advance EPA's goals, one possible solution would be to raise the population cap.

Section 9 of the United States Census Bureau's Statistical Abstract of the United States: 2000 indicates that approximately 25,750 of America's 36,000 municipalities, towns, and townships have fewer than 2,500 residents. This 72 percent of America's units of local government is home to only 9 percent of the Americans who live in municipalities, towns, and townships. Doubling the size of the resident population to 5,000 adds another 4,000 units of local government and another 6 percent of the Americans who live within units of local government. Another 2,700 units of local government have populations between 5,000 and 10,000, and are home to an additional 9 percent of the Americans who live within units of local government. All told, the 32,400 units of local government that have fewer than 10,000 residents represent approximately 90 percent of all units of local government in America, and the 51,400,000 people who live in them represent less than a quarter of all Americans who live in municipalities, towns, or townships.

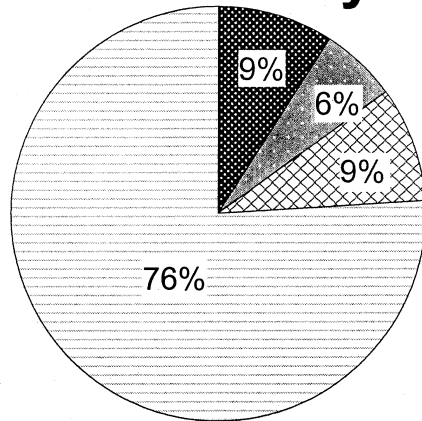
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Percentage of Communities of Each Size



■ Population < 2,500 ▨ 5,000 < 10,000
■ 2,500 < 5,000 ▤ Population > 10,000

Percentage of U.S. Population Living in Each Size of Community



■ Population < 2,500 ▨ 5,000 < 10,000
■ 2,500 < 5,000 ▤ Population > 10,000

Congress has defined small town differently in various public laws. In the Small Business Regulatory Enforcement Fairness Act of 1996, and the Small Business Act “small governmental jurisdiction” means the governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Both of these statutes allow a federal agency to establish, after opportunity for public comment, one or more definitions of small governmental jurisdiction “which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction.”

Where EPA rules take size into account, most often it is to assign facilities to categories on the basis of the amount of pollution the facility can potentially release into the environment. In regulations controlling municipal storm water discharge facilities and in the primary drinking water standards, EPA has established a regulatory framework that provides different requirements for communities with different resident populations.

In these examples, the size of the resident population is directly proportional to the amount of pollution potentially released into the environment by municipal storm water discharge facilities, to the number of people whose health is potentially placed at risk by drinking water that does not meet standards, and to the number of ratepayers who pay the costs of compliance. For rules related to storm water discharge, EPA defines small local governments as those serving a population of fewer than 100,000. EPA’s primary drinking water standards establish a number of different population caps beneath which communities would be considered small enough that they need not meet the more stringent requirements the regulation imposes on larger communities. Primary drinking water standards that establish a small community population cap most often set the cap at either 3,300 or 10,000 residents. In proposing the Arsenic Rule, EPA created provisions intended to lessen the burden on small public water systems that serve fewer than 10,000 persons, citing the population level specified by Congress in section 1412(b)(4)(ii) of the Safe Drinking Water Act for applicability of small system flexibility provisions. EPA requests comment on whether application of the Small Communities Policy should continue to be limited to communities with a population of less than 2,500,

whether the Small Communities Policy should adopt the population cap of another EPA statute or regulation, or whether it would be appropriate to establish a population cap at some level not found in EPA statutes or regulations.

b. Replace the Population Cap With a Capacity Test

Noting that the primary goal of the Small Communities Policy is to build a community’s capacity to achieve and sustain comprehensive environmental compliance, some stakeholders suggest that the number of people who live in a community may not be the most reliable measure of whether the community lacks or possesses that capacity. They note that some violating communities with fewer than 2,500 residents may have the financial capacity to achieve and sustain comprehensive environmental compliance once their environmental needs are identified. They also note larger, poorer communities may be unable to achieve that result without extensive assistance. For this reason, these stakeholders recommend that EPA’s Small Communities Policy determine a community’s eligibility to participate in a compliance assistance program not on the basis of a community’s population, but solely on a finding that the community lacks the capacity to comply without assistance.

Although the Small Communities Policy already offers a list of indicators states can use to measure a community’s capacity to comply, revisions to the policy could require that a community’s capacity be determined either on the basis of one or two indicators, on the basis of a detailed demographic analysis, or something in between. Possible capacity indicators for a quick determination would likely focus on whether or not the community employs either a professional government manager or a certified professional whose primary responsibility is environmental compliance. If the Small Communities Policy were to adopt capacity indicators of this type, EPA would take care not to create incentives for communities to avoid employing trained staff as a way to receive preferential treatment from their state.

Some stakeholders have pointed out that a capacity analysis is implicit in the Small Communities Policy’s requirement that states assess the good faith of communities that are candidates for their compliance assistance programs. The good faith requirement indicates that a community that has the capacity to comply with environmental requirements, but chose not to exercise that capacity, would not be eligible for

participation because it has not acted in good faith. Accordingly, some would view elimination of the Small Communities Policy’s population cap in favor of a capacity analysis as removing an arbitrary barrier to delivery of the Small Communities Policy’s benefits to needy communities larger than 2,500, not as requiring states to perform additional analysis of candidate communities. Because almost all communities with populations greater than 10,000 are professionally managed and do employ certified environmental professionals, these stakeholders say, elimination of the population cap would not result in application of the Small Communities Policy to large communities, as communities with professional staff should be able to identify and address environmental compliance issues without a state’s assistance. Other stakeholders have suggested that small communities with professional staff are *better* able to take advantage of the provisions of the Small Communities Policy, and that employment of professional staff should not bar a small community’s participation in comprehensive environmental compliance assistance programs if other capacity measures indicate that the community is unlikely to achieve and sustain comprehensive compliance without assistance from the state. EPA requests comment as to whether the Small Communities Policy should establish a measurement of a small community’s compliance capacity as the exclusive criterion for the community’s participation in a comprehensive environmental compliance assistance program.

2. The Resource Burden on States

States note that bringing together staff with expertise in various environmental programs, coordinating their efforts, and making them available to provide compliance assistance at the request of small communities can require the investment of significant state resources. EPA hopes to fund a few pilot projects that will help states establish and implement a small community comprehensive environmental compliance assistance program, but Agency resources for such efforts will be limited and subject to annual budget uncertainties.

a. Provide “In Kind” Assistance

EPA anticipates that providing in-kind assistance that lowers a state’s implementation costs will prove a reliable and effective method of addressing the states’ lack of resources. Many of the tools a state needs to establish a comprehensive

environmental compliance assistance program have already been developed by EPA and are available from EPA and from other sources. Examples include:

- The Profile of Local Government Operations (EPA 310-R-99-001), which details the environmental requirements triggered by typical local governmental activities. Sections of this 300-page book focus on different government operations (*i.e.*, vehicle/equipment maintenance, construction/property management, *etc.*), and describe the environmental requirements associated with the performance of that operation.

- The Local Government Environmental Assistance Network (LGEAN). EPA and nine non-governmental organizations maintain an Internet site (www.lgean.org) that provides information about the environmental responsibilities of local governments; alerts users to new and developing issues related to environmental compliance; allows users to review and comment on statutes, regulations and guidance in development; answers their questions, provides a forum for peer counseling, and offers links to grants information and to technical consultants. LGEAN's information services are also available via a toll free telephone number for those who do not have access to the Internet.

- The Environmental Audit Protocols. To date, EPA has published eleven handbooks that provide detailed information on how to audit for compliance with various environmental statutes. Links to the full text of these protocols can be found at <http://es.epa.gov/oeca/main/strategy/crossp.html>.

- The Environmental Management, Auditing, and Pollution Prevention Tool (EMAPPT). Currently under development, this web-based tool will allow users to customize activity-specific compliance assistance tools that identify the applicable regulatory requirements, audit protocol checklists, environmental management system materials, and opportunities for pollution prevention.

- The Compliance Assistance Clearinghouse (<http://cfpub1.epa.gov/clearinghouse/>). This guide to compliance information on the Internet provides users quick access to compliance tools, contacts, and activities available from EPA and other compliance assistance providers.

- The Public Entity EMS Resource (PEER) Center. This Web site is scheduled to go on-line in the spring of 2002, with four Local Resource Centers to open across the nation shortly thereafter. The PEER Center will

provide a cost-effective central information source where local governments can find quality-assured, field-tested data, information, tools, resources, technical assistance, and training they need to establish an environmental management system for a variety of public facilities in a variety of circumstances.

In addition to these compliance assistance tools, EPA could develop and distribute model documents and process templates that would further reduce program development costs for states. EPA welcomes comments on the utility of these compliance assistance tools and whether additional materials would be helpful.

b. Allow a "Fence Line" Approach

Because performing a comprehensive evaluation of the environmental compliance status of all of a small community's operations can necessitate input from several individuals and involve extensive analysis, allowing participation of small communities on the basis of "fence line" evaluations could be another means of reducing a state's resource demands. The fence line approach erects a figurative fence around one of the local government's facilities or operations (*i.e.*, a waste water treatment plant, vehicle fleet operations, *etc.*) that is the subject of compliance concern. A state can focus personnel and expertise on the environmental regulation that primarily controls activity within the fence line, and make use of information sources like those described in the preceding section to identify additional environmental requirements that the local government must meet within the fence line. Because the fence line approach has seen widespread use by local government's developing environment management systems, the PEER Center will make available case studies showing how several different types of local government facilities established a process to identify their environmental responsibilities. The PEER Center will also make available field tested templates for environmental management systems local government facilities put in place to ensure sustained environmental compliance. By focusing on a limited subset of the small community's facilities or operations, a state can reduce the amount of resources needed to help a community develop a plan and schedule to address environmental concerns identified during a compliance assessment. The small community, however, remains at risk of future discovery of environmental violations at its other facilities.

c. Shift Costs to the Small Community

While EPA will continue working to reduce a state's resource burdens associated with offering comprehensive environmental compliance assistance to small communities, a state can elect to reduce its resource burden by requiring local governments to demonstrate that they qualify for participation in the state's program, or by placing limits on the violations that are eligible for treatment under the Small Communities Policy. The policy permits states to select small communities for participation in their compliance assistance programs at any point in the compliance determination process. A state small community compliance assistance program that sends staff consultants to each community to evaluate its compliance status and identify its violations will require more operating resources than a program that limits participation to those communities that complete a compliance self-evaluation, find violations of more than one environmental law, and reveal those violations to the state in an application for participation. EPA acknowledges that many small communities currently lack the regulatory knowledge and technical expertise required to perform a comprehensive compliance self-evaluation. States, however, can direct interested small communities to the EPA compliance assistance tools described above, as small communities, in many instances, were EPA's intended audience. These tools will help small communities understand their environmental responsibilities and measure their compliance status. Revisions to the Small Communities Policy could either directly append these materials or indicate where they are available from EPA or on the Internet.

States also can reduce their resource demands by awarding grants to small communities from an amount EPA has set aside from the Safe Drinking Water Act State Revolving Fund. Section 1452(q) of the Safe Drinking Water Act authorizes EPA to fund small system technical assistance grants for communities with populations of up to 10,000. States can award grants that communities are required to use to pay for a preliminary engineering evaluation of environmental compliance concerns at their drinking water facilities. While these funds are available only for activities related to compliance with the primary drinking water standards, they can be used as a source of partial funding for a more comprehensive

evaluation of a small community's environmental compliance.

d. Tiering and Streamlining

There are a number of other possible alternatives for states seeking to limit the costs of offering comprehensive environmental compliance assistance to small communities. States could assign communities to tiers on the basis of population, capacity, or some other measure and offer different levels of service to communities in different tiers. For example, the smallest communities could receive comprehensive, hands-on compliance assistance, while larger (but still small) communities would be given an information package that guides them through the process of identifying their violations, developing a compliance strategy, and applying for state approval of their compliance plan.

EPA may also investigate opportunities to coordinate with other federal agencies whose regulations impose requirements on local governments with the goal of increasing efficiency through better coordination among agencies. Streamlining the process of implementing federal regulations could reduce a state's resource burden. EPA seeks comment on these possible revisions intended to reduce a state's resource burden associated with offering comprehensive environmental compliance assistance to small communities, as well as comment on the possibility that state resources devoted to compliance assistance will be offset by cost savings resulting from better coordination among state offices, fewer violations in small communities, the release of less pollution to the environment, improved public health protection, and reduced demands on inspection and enforcement personnel.

3. The Incentives To Participate

For the Small Communities Policy to be effective in helping EPA meet its goal of comprehensive and sustained environmental compliance by small communities, states must have an incentive to offer comprehensive environmental compliance assistance to small communities, and small communities must have an incentive to participate in a state's program.

a. Incentives for States

States with active programs for providing comprehensive environmental compliance assistance to small communities will receive intrinsic benefits.

These states will have more confidence in their assessments of the environmental compliance status of their small communities, they will make

measurable progress toward reducing risks to the health of their citizens and to the environment, and will be gathering information that will allow them to make accurate plans and develop realistic budgets for future environmental compliance. States whose comprehensive environmental compliance assistance programs operate within the parameters of the Small Communities Policy enjoy a much greater level of flexibility than they are afforded under EPA's enforcement policies; as they are authorized to exercise their own judgment regarding the most appropriate response to discovered violations. An effective program will also result in sustained compliance on the part of the participating communities that will produce lasting environmental benefits and eventually allow the state to refocus enforcement and compliance resources on other regulated entities.

Additionally, EPA is exploring ways it can award recognition to states that establish and implement programs that provide comprehensive environmental compliance assistance to small communities. For example, special recognition can be awarded to the first state to establish such a program in each EPA Region. The Agency can offer a limited number of grants to states to establish comprehensive small community environmental compliance assistance programs, may offer states opportunities to participate in EPA-funded pilot projects, and give implementing states priority access to new EPA services that support the delivery of compliance assistance. EPA seeks comment on these possible incentives, and welcomes additional suggestions.

b. Incentives for Small Communities

To encourage small communities to participate in comprehensive environmental compliance assistance programs, the Small Communities Policy says EPA will generally defer to a state's decision to waive part or all of the enforcement penalty normally assessed in response to discovered violations. Because EPA guidances allow penalties to be adjusted on the basis of a violator's ability to pay, small communities are rarely ordered to pay large penalties in settlement of enforcement actions. Evidence that penalty mitigation or waiver has not been an effective incentive for small communities can be found in states such as Washington and Alaska. These states established programs to offer comprehensive environmental compliance assistance to small

communities, but then found it difficult to recruit communities to participate.

The significant benefits these programs provide to small communities can serve as the incentive to participate if EPA does a better job of publicizing those benefits. Small communities may be more interested in participating in comprehensive environmental compliance assistance programs if they know such programs will identify and address all of their environmental concerns, and that they will emerge from the process both with a plan for sustained environmental compliance and the technical, administrative, and financial capacity to follow through on the plan. Communities that participate in such programs will know they have done what they should do to protect their residents, and they will be able to budget for the future with confidence that they will not be surprised by overlooked environmental requirements that necessitate expensive remediation.

EPA seeks comment on additional incentives the Agency and states can offer small communities to participate in comprehensive environmental compliance assistance programs. Some states currently provide communities a small grant to fund a comprehensive or a program-specific engineering analysis to assess the communities' environmental compliance status. Another option may be to give participating communities priority access to available capital funding in the form of grants or low interest loans, or to provide them greater access to free or low-cost operator training. States may also provide participating communities opportunities to consolidate operations or operators with other nearby communities. EPA may be able to offer participating communities priority access to new or premium compliance assistance services supported by EPA. Possibilities include web-cast information sessions on LGEAN, or environmental management systems counseling through one of the PEER Center's Local Resource Centers. Communities that have completed the process or achieved measurable results could be offered prizes or recognition. Special recognition could be offered to the first few communities to complete the process in an EPA Region, each state, and within additional political subdivisions as appropriate. EPA is also investigating the possibility that certification of compliance with comprehensive environmental assessment standards can result in improved bond ratings and reduced liability insurance premiums. EPA seeks comment on these possible incentives, and welcomes additional suggestions.

E. Possible Revisions to Other Identified Aspects of the Small Communities Policy

If commenters believe that a policy with less flexibility would provide clearer guidance, EPA will consider revising the Small Communities Policy to provide states with more specific directions, or to append illustrative models and templates. For example, the Small Communities Policy could:

- Establish a definite time limit within which a state must respond to a small community's request for compliance assistance if the Small Communities Policy is to apply;
- Narrow the definition of community;
- Narrow the range of community activities to which the Small Communities Policy applies;
- Further limit the types of violations a small community comprehensive environmental compliance assistance program can address;
- Specify when and how violations must be discovered if they are to be eligible for inclusion in a comprehensive compliance schedule and agreement;
- Draw distinctions between major and minor violations, between violations of different statutes or regulations with respect to appropriate intervals for disclosing and correcting violations;
- Begin tracking the time elapsed for a small community's compliance activities from the date it requests assistance from the state, the date the state identifies violations in the community, or some other date;
- Shorten or lengthen the 180 day interval for a small community either to return to compliance or to enter into a written and enforceable schedule for returning to compliance;
- Establish a defined interval for achieving compliance that a small community must not exceed;
- Incorporate attainment of necessary funding into compliance deadlines
- Provide specific guidance on how small communities are to prioritize their compliance activities; and
- Provide a structure for how states and EPA will interact and how information will be reported to EPA when a state implements a small community environmental compliance assistance program.

EPA welcomes public comment on these aspects of the Small Communities Policy.

F. Possible Revisions Related to Small Communities on Indian Lands

The Small Communities Policy makes no distinction between states and Tribes that have received EPA approval for treatment as states. Implicit, but not stated in the policy, is the fact that EPA directly implements regulatory programs on Indian reservations where the Tribe has not been approved for treatment as a state. In such circumstances, EPA is the "state" and can choose to offer comprehensive environmental compliance assistance to small tribal communities. EPA requests comment regarding whether the Small Communities Policy contain should include provisions specific to small communities located on Indian lands or, in the alternative, whether EPA should develop a separate policy for such communities.

G. Other Possible Revisions

EPA acknowledges that this **Federal Register** Notice may not have identified all impediments to effective use of the Small Communities Policy to support wide-spread establishment of state programs to provide comprehensive environmental compliance assistance to small communities. The Agency welcomes all comments and suggestions that will promote this goal.

Dated: January 14, 2002.

Michael M. Stahl,

Director, Office of Compliance.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-00730B; FRL-6822-1]

Draft Guidance for Pesticide Registrants on New Labeling Statements for Spray and Dust Drift Mitigation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On August 22, 2001, the Agency announced the availability of, and sought public comment on, the draft PR Notice titled "Spray and Dust Drift Label Statements for Pesticide Products." On November 14, 2001, EPA published a notice extending the due date for comments until January 19, 2002. The Agency has received several requests to extend the public comment period further to allow commenters more time to prepare their responses to the PR Notice. The Agency believes that

additional time is appropriate and would be beneficial; therefore, this notice extends the comment due date until March 31, 2002. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures and registration-related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice provides guidance on drift label statements for pesticide products. The purpose of this new labeling is to provide pesticide registrants and applicators and other individuals responsible for pesticide applications with improved and more consistent product label statements for controlling pesticide drift from spray and dust applications in order to be protective of human health and the environment. The Agency invites comments on any aspect of the draft PR Notice as well as the specific issues addressed under **SUPPLEMENTARY INFORMATION**.

DATES: Comments, identified by the docket control number OPP-00730B, must be received on or before March 31, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. under **SUPPLEMENTARY INFORMATION** of the August 22, 2001 **Federal Register**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00730B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7099, fax number: (703) 305-6244; and e-mail address: ellenberger.jay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. It may be of particular interest, however, to those persons who hold pesticide registrations, apply pesticides, or regulate the use of pesticides for states, territories, or tribes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions