

INDIAN LANDS OPEN DUMP CLEANUP ACT OF 1994

HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

S. 720

TO CLEAN UP OPEN DUMPS ON INDIAN LANDS, AND FOR OTHER
PURPOSES

HEARING HELD IN WASHINGTON, DC
JULY 26, 1994

Serial No. 103-102

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S. 720, INDIAN LANDS OPEN DUMP CLEANUP ACT OF 1994

TUESDAY, JULY 26, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:37 a.m., in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. The committee will now come to order. Today, we will be receiving testimony on S. 720, a bill to clean up open dumps on Indian lands. Our subcommittee has held hearings on the problem of open dumps and leaking underground storage tanks on Indian lands.

From these hearings we have learned that, first, there are over 650 open dumps located on Indian lands. Of these facilities, over 100 were constructed by the Indian Health Service.

Only one of these landfills meets the new EPA regulations governing solid waste landfills. It has been estimated that it will cost over \$130 million to effectively close or bring these facilities into compliance.

At our hearings last year, I sat and listened to officials from EPA, BIA, and the IHS tell this committee that they had no responsibility to address the problems of open dumps on Indian lands.

We are looking at an environmental crisis in Indian country. As the Federal trustee responsible for constructing many of these facilities, we must accept the responsibility for the effective closure of open dumps and the continued operation of tribal landfills. We must provide financial and technical assistance to tribes to develop solid waste management plans for their lands.

We cannot allow the Federal Government to stand idly by while tribes' precious resources are being contaminated. I look forward to your testimony on this important legislation.

I would ask all witnesses to summarize their statements within 5 minutes. The full statement will be made part of the record which will remain open for one week.

At this time I would ask that the bill, section-by-section analysis, and background be made part of the record.

[Text of the bill, S. 720, section-by-section analysis, and background information follow:]

103D CONGRESS
2D SESSION

S. 720

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1994

Referred to the Committee on Natural Resources

AN ACT

To clean up open dumps on Indian lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Lands Open
5 Dump Cleanup Act of 1994”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) **FINDINGS.**—The Congress finds that—

3 (1) there are at least 600 open dumps on In-
4 dian lands;

5 (2) these dumps threaten the health and safety
6 of residents of Indian lands and contiguous areas;

7 (3) many of these dumps were established or
8 are used by Federal agencies such as the Bureau of
9 Indian Affairs and the Indian Health Service;

10 (4) these dumps threaten the environment;

11 (5) the United States holds most Indian lands
12 in trust for the benefit of Indian tribes and individ-
13 uals; and

14 (6) most Indian tribal governments lack the fi-
15 nancial and technical resources necessary to close
16 and maintain these dumps in compliance with appli-
17 cable Federal laws.

18 (b) **PURPOSES.**—The purposes of this Act are to—

19 (1) identify the location of open dumps on In-
20 dian lands;

21 (2) assess the relative health and environmental
22 hazards of such dumps; and

23 (3) provide financial and technical assistance to
24 Indian tribal governments, either directly or by con-
25 tract, to close such dumps in compliance with appli-
26 cable Federal standards and regulations, or stand-

1 ards promulgated by an Indian tribal government, if
2 such standards are more stringent than the Federal
3 standards.

4 **SEC. 3. DEFINITIONS.**

5 For the purposes of this Act, the following definitions
6 shall apply:

7 (1) CLOSURE OR CLOSE.—The term “closure or
8 close” means the termination of operations at open
9 dumps on Indian land and bringing such dumps into
10 compliance with applicable Federal standards and
11 regulations, or standards promulgated by an Indian
12 tribal government, if such standards are more strin-
13 gent than the Federal standards and regulations.

14 (2) DIRECTOR.—The term “Director” means
15 the Director of the Indian Health Service.

16 (3) INDIAN LAND.—The term “Indian land”
17 means—

18 (A) land within the limits of any Indian
19 reservation under the jurisdiction of the United
20 States Government, notwithstanding the issu-
21 ance of any patent, and including rights-of-way
22 running through the reservation;

23 (B) dependent Indian communities within
24 the borders of the United States whether within
25 the original or subsequently acquired territory

1 thereof, and whether within or without the lim-
2 its of a State; and

3 (C) Indian allotments, the Indian titles to
4 which have not been extinguished, including
5 rights-of-way running through the same.

6 (4) INDIAN TRIBAL GOVERNMENT.—The term
7 “Indian tribal government” means the governing
8 body of any Indian tribe, band, nation, pueblo, or
9 other organized group or community which is recog-
10 nized as eligible for the special programs and serv-
11 ices provided by the United States to Indians be-
12 cause of their status as Indians.

13 (5) INVENTORY.—The term “inventory” means
14 a listing of the geographic location of all open
15 dumps, an evaluation of the contents of each dump,
16 and an assessment of the relative impact of each
17 dump on the environment and public health.

18 (6) OPEN DUMP.—The term “open dump”
19 means any facility or site where solid waste is being
20 or has been routinely and regularly disposed of that
21 has not been closed or covered or that does not meet
22 the criteria for a new municipal solid waste landfill
23 unit promulgated pursuant to the Solid Waste Dis-
24 posal Act (42 U.S.C. 6901 et seq.).

1 (7) POSTCLOSURE MAINTENANCE.—The term
2 “postclosure maintenance” means any activity un-
3 dertaken at a closed solid waste facility on Indian
4 land to maintain the integrity of containment fea-
5 tures, monitor compliance with applicable perform-
6 ance standards, or remedy any situation or occur-
7 rence that violates regulations promulgated pursuant
8 to the Solid Waste Disposal Act (42 U.S.C. 6901 et
9 seq.).

10 (8) SOLID WASTE.—The term “solid waste”
11 means any garbage, refuse, sludge from a
12 wastewater treatment plant, water supply treatment
13 plant, or air pollution control facility, and other dis-
14 carded material, including solid, liquid, semisolid, or
15 contained gaseous material resulting from industrial,
16 commercial, mining, and agricultural operations, and
17 from community activities, but does not include solid
18 or dissolved materials in domestic sewage, or solid or
19 dissolved materials in irrigation return flows or in-
20 dustrial discharges that are point sources subject to
21 permit under section 402 of the Federal Water Pol-
22 lution Control Act (33 U.S.C. 1342), or source ma-
23 terial, special nuclear material, or by-product mate-
24 rial as defined in section 11 of the Atomic Energy
25 Act of 1954 (42 U.S.C. 2014).

1 **SEC. 4. AUTHORITY OF THE DIRECTOR OF THE INDIAN**
2 **HEALTH SERVICE.**

3 (a) INVENTORY.—Upon request by an Indian tribal
4 government, the Director shall—

5 (1) conduct an inventory of open dumps on the
6 Indian lands which are subject to the authority of
7 the Indian tribal government;

8 (2) determine the relative severity of the threat
9 to public health and the environment posed by each
10 dump based on information available to the Director
11 and the Indian tribal government, unless the Direc-
12 tor, in consultation with the Indian tribal govern-
13 ment, determines that actions such as soil testing or
14 water monitoring would be appropriate in the cir-
15 cumstances; and

16 (3) develop cost estimates for the closure and
17 postclosure maintenance of such dumps.

18 (b) ASSISTANCE.—Upon completion of the activities
19 required to be performed pursuant to subsection (a), the
20 Director shall, subject to subsection (c), provide financial
21 and technical assistance to the Indian tribal government
22 to carry out the activities necessary to—

23 (1) close such dumps; and

24 (2) provide for postclosure maintenance of such
25 dumps.

1 (c) CONDITIONS.—All assistance provided pursuant
2 to subsection (b) shall be made available on a site-specific
3 basis in accordance with priorities developed by the Direc-
4 tor. Priorities on a specific reservation shall be developed
5 in consultation with the Indian tribal government. The
6 priorities shall take into account the relative severity of
7 the threat to public health and the environment posed by
8 each open dump and the availability of funds necessary
9 for closure and postclosure maintenance.

10 **SEC. 5. CONTRACT AUTHORITY.**

11 (a) AUTHORITY OF DIRECTOR.—To the maximum
12 extent feasible, the Director shall carry out duties under
13 this Act through contracts, compacts, or memoranda of
14 agreement with Indian tribal governments pursuant to the
15 Indian Self-Determination and Education Assistance Act
16 (25 U.S.C. 450 et seq.), section 7 of the Act of August
17 5, 1954 (42 U.S.C. 2004a), or section 302 of the Indian
18 Health Care Improvement Act (25 U.S.C. 1632).

19 (b) DEMONSTRATION PROJECTS.—(1) The Director
20 may establish and carry out a program providing for dem-
21 onstration projects involving open dumps on Indian land.
22 It shall be the purpose of such projects to determine if
23 there are unique cost factors involved in the cleanup and
24 maintenance of open dumps on such land, and the extent
25 to which advance closure planning is necessary. Under the

1 program, the Director is authorized to select three Indian
2 tribal governments to participate in such demonstration
3 projects.

4 (2) Criteria established by the Director for the selec-
5 tion and participation of an Indian tribal government in
6 the demonstration project shall provide that—

7 (A) in order to be eligible to participate, an In-
8 dian tribal government must have one or more exist-
9 ing open dumps on the Indian lands that are under
10 its authority, and have a plan for the closure of each
11 such dump;

12 (B) at least one of the Indian tribal govern-
13 ments selected by the Director shall proceed under
14 a contract entered into pursuant to the Indian Self-
15 Determination and Education Assistance Act; and

16 (C) at least one of the Indian tribal govern-
17 ments selected by the Director shall permit the In-
18 dian Health Service to directly provide for the clean-
19 up and maintenance.

20 (3) No demonstration project shall be funded for
21 more than 3 fiscal years.

22 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) GENERAL AUTHORIZATION.—There are author-
24 ized to be appropriated such sums as may be necessary
25 to carry out this Act.

1 (b) FUNDING SOURCE.—The activities required to be
2 performed by the Director under this Act shall only be
3 funded from appropriations made pursuant to this Act
4 and such activities shall be coordinated with activities re-
5 lated to solid waste and sanitation facilities funded pursu-
6 ant to other authorizations.

7 **SEC. 7. DISCLAIMERS.**

8 (a) AUTHORITY OF DIRECTOR.—Nothing in this Act
9 shall be construed to alter, diminish, repeal, or supersede
10 any authority conferred on the Director pursuant to sec-
11 tion 302 of the Indian Health Care Improvement Act (25
12 U.S.C. 1632), and section 7 of the Act of August 5, 1954
13 (42 U.S.C. 2004a).

14 (b) EXEMPTED LANDS AND FACILITIES.—This Act
15 shall not apply to open dump sites on Indian lands—

16 (1) that comprise an area of one-half acre or
17 less, and that are used by individual families on
18 lands to which they hold legal or beneficial title;

19 (2) of any size, that have been or are being op-
20 erated for a profit; or

21 (3) where solid waste from an industrial process
22 is being or has been routinely disposed of at a pri-

1 vately owned facility in compliance with applicable
2 Federal laws.

Passed the Senate May 12 (legislative day, May 2),
1994.

Attest:

MARTHA S. POPE,
Secretary.

**SECTION-BY-SECTION ANALYSIS OF S. 720,
the Indian Lands Open Dumps Cleanup Act of 1994.**

SECTION 1. SHORT TITLE

Section 1 cites the short title of the Act as the "Indian Lands Open Dump Cleanup Act of 1994".

SECTION 2. FINDINGS AND PURPOSE

Section 2 sets out the findings of the Congress and the purposes of the legislation.

SECTION 3. DEFINITIONS

Section 3 sets out the definitions used in the Act.

SECTION 4. AUTHORITY OF THE DIRECTOR OF THE INDIAN HEALTH SERVICE

Section 4 provides that upon the request of an Indian tribe, the Director of the IHS shall conduct an inventory of open dumps on tribal lands, determine the relative threat to public health and the environment, and develop cost estimates for the closure and postclosure maintenance of such dumps.

Subsection (b) requires the Director to provide technical and financial assistance to the tribe upon completion of the activities set out in subsection (a).

Subsection (c) provides that all assistance provided under subsection (b) shall be provided on a site specific basis consistent with the priorities established under the Act.

SECTION 5. CONTRACT AUTHORITY

Subsection (a) provides that to the maximum extent feasible the Director shall carry out his duties through agreements, contracts, or compacts with Indian tribes pursuant to the Indian Self-Determination Act and the Indian Health Care Improvement Act.

Subsection (b) establishes a demonstration project to determine the unique cost factors involved in the cleanup and maintenance of open dumps on Indian lands. The Director shall select up to 3 Indian tribes to participate in the demonstration project for up to 3 years. An Indian tribe must have one or more existing open dumps on their lands and have a plan for closure for each dump in order to be eligible for participation in the project. It also provides that at least one Indian shall contract to carry out the project under the Indian Self-Determination Act and at least one tribe shall have the Indian Health Service undertake the cleanup and maintenance activities under the project.

SECTION 6. AUTHORIZATION OF APPROPRIATIONS

Section 6 authorizes to be appropriated such sums as may be necessary to carry out the Act. Subsection (b) provides that activities required under this Act may only be funded from appropriations under this Act and these activities shall be coordinated with the Indian Health Service responsibilities for solid waste and sanitation facilities.

SECTION 7. DISCLAIMERS

Section 7 provides that nothing in this Act shall be construed to alter, diminish, or supersede any authority conferred upon the Director under the Indian Health Care Improvement Act. Subsection (b) provides that this Act shall not apply to commercially operated dumps, individual family dumps, and dumps where solid waste from an industrial process has been disposed of at a privately owned facility in compliance with Federal laws.

**BACKGROUND ON S. 720,
the Indian Lands Open Dumps Cleanup Act of 1994**

Many solid waste facilities on Indian lands present serious environmental problems for Indian tribes. The problems associated with solid waste disposal on Indian lands are among the most serious threats to public health and the environment. Over the years, Indian tribes have looked to the Federal government for both technical and financial assistance to address the problems of open dumps and solid waste management on their lands. Despite the need for Federal assistance to respond to solid waste management problems, the Federal government has provided little assistance to tribal governments. The Federal agencies which have the most significant role in tribal environmental issues are the Environmental Protection Agency, the Bureau of Indian Affairs, and the Indian Health Service. Each of these agencies has a role in carrying out the trust responsibilities to Indian tribes. The Bureau of Indian Affairs is the principle agency involved in the management of Indian lands. The Indian Health Services is responsible for the construction of wastewater treatment facilities and sanitary landfills on Indian lands. The Indian Health Service also is authorized to provide technical and financial assistance to Indian tribes for the continuing operation of wastewater treatment facilities. The EPA has the responsibility to regulate environmental quality on Indian lands and to provide financial and technical assistance to Indian tribes pursuant appropriate environmental statutes. All of these responsibilities are based on the underlying trust responsibility of the Federal government to Indian tribes as recognized in treaties and in statute.

Blue Legs Decision

The question of which Federal agency is responsible, and liable, for the clean up of open dump sites on the Pine Ridge Indian Reservation in South Dakota was raised in the case, *Blue Legs v. Bureau of Indian Affairs, et al.*, 867 F.2d. 1094 (8th Cir. 1989). This case was a private citizen suit to enforce the Solid Waste Disposal Act against the Indian tribe, the EPA, the BIA and the IHS. In deciding this case, the 8th Circuit Court of Appeals held that since Indian tribes are treated as municipalities under RCRA, Congress specifically intended to waive the Indian tribe's sovereign immunity with respect to the violations of the Act. The Court held the Indian tribe, the Bureau of Indian Affairs and the Indian Health Service all partially liable for cleaning up the dump sites on the Pine Ridge Indian Reservation. The Court based its decision to impose liability on the BIA and the IHS on the Federal trust responsibility to Indian tribes. The Court based its determination in part on the authority vested in the BIA and the IHS through the Snyder Act 25 U.S.C. Section 13. In addition, the Court cited the fact that both the Bureau of Indian Affairs and the Indian Health Service had contracted with the Indian tribe to haul their waste to the tribal landfills.

Since the decision in *Blue Legs*, the Federal government has done very little to address environmental problems related to open dumps. Currently, neither the BIA nor the IHS view their responsibilities as requiring them to provide financial assistance to Indian

tribes to clean up open dumps or facilities which are out of compliance. The EPA has stated that they are unable to provide assistance to Indian tribes under the provisions of RCRA without statutory amendments. Indian tribes are faced with finding alternative resources to address these serious environmental problems.

There are over 650 open dumps located on Indian reservations. Of these sites, 108 are landfills constructed by the Indian Health Service and subsequently transferred to tribal governments. At the time these facilities were constructed, they met the existing Federal standards. It has been estimated that it will cost over \$130 million to bring these solid waste facilities into compliance with existing Federal standards. It has been estimated by the Indian Health Service that only one landfill located on Indian lands will be in compliance with the newly promulgated regulations for the operation, closure, and post closure maintenance of solid waste landfills. (40 CFR part 258). These regulations were originally scheduled to go into effect on October 9, 1993. EPA promulgated a revised rule which provided that a landfill that receives less than 100 tons of solid waste per day would become subject to the new regulations by April 9, 1994 and a landfill that receives less than 20 tons of solid waste per day and which receives less than 25 inches of rain per year would become subject to the new regulations on October 9, 1995. Any landfill that received waste after October 9, 1993 must meet the final cover requirements under the new regulations. In general, the requirements for final cover are at least eighteen inches of soil and six inches of earthen material capable of supporting plant life. EPA has estimated that it will cost approximately \$50,000 per acre to meet the final cover requirements under the new regulations. The new regulations also require active solid waste landfills to meet groundwater monitoring requirements, specifications for liners, and corrective action requirements. Operators of landfills are required to post financial assurances sufficient to meet closure and post closure maintenance costs.

The Indian Open Dumps Cleanup Act

On April 1, 1993, Senators McCain, Inouye and Reid introduced S. 720, the Indian Open Dumps Cleanup Act of 1994. The legislation passed the Senate on May 17, 1994 and was referred to the Subcommittee on Native American Affairs of the Committee on Natural Resources. The bill would require the Director of the Indian Health Service to conduct an inventory of open dumps located on tribal lands upon request of an Indian tribe. The Director would be required to determine the relative threat to public health and the environment posed by each dump and to develop cost estimates for closure and post closure maintenance of such dumps. Under the bill, the Director shall provide technical and financial assistance to an Indian tribe for the closure and post closure maintenance of an open dump. In determining the relative priority of each dump the Director shall consider the relative threat to public health and the environment posed by each dump. The legislation also establishes a three year demonstration project to determine the unique factors in the clean up of open dumps on Indian lands and the need for advance planning for closure activities.

Mr. RICHARDSON. The Chair recognizes the distinguished ranking member of the committee who has been enormously active on these issues and many other Native American and Alaska native issues, the gentleman from Alaska.

STATEMENT OF HON. DON YOUNG

Mr. YOUNG. Thank you, Mr. Chairman. And you are forgiven for being late. It is always the staff's fault, we know that.

Mr. Chairman, I am pleased the subcommittee is considering this issue of open dumps on Indian lands. S. 720 would direct the Indian Health Service to respond to requests by Indian groups to conduct an inventory of open dumps on Indian lands, assess health risks to native people and the environment.

It would also provide financial and technical assistance to close and provide post-closure maintenance for open dumps in compliance with Federal standards and more stringent tribal standards.

I understand during the markup of this bill the Senate Committee on Indian Affairs unanimously adopted an amendment proposed by my colleague from Alaska which deletes from the bill all reference to Alaska Native villages and lands.

I understand that in its stead, S. 1686 was offered and is intended to address the issue of contaminated lands conveyed to Alaska Native corporations formed under the Alaska Native Claims Settlement Act [ANCSA] in 1971.

Mr. Chairman, I would reference section 5 of H.R. 3612, a bill which I introduced on November 21st, 1993, which would relieve ANCSA corporations of liability for hazardous waste or contaminants left in or on ANCSA lands prior to conveyance to Native corporations.

This section of my bill directs the Secretary of Interior to remove all contaminants left by the United States or by agents of the United States or lessees prior to conveyance of these lands to the native corporations. This section of my bill would allow for cleanup of hazardous materials left on ANCSA lands prior to conveyance and does not directly address the open dump sites on native lands.

However, open dump sites can be incorporated in this bill, and I am sure you are going to submit a substitute for the bill which we are discussing today. I would suggest, Mr. Chairman, this would be appropriate.

I would like to welcome Mr. Smith. He is here representing the City of St. Paul. Also, I would like to continue to have him on the witness stand and not sitting where I am today.

He is now, Mr. Chairman, my official opponent in this upcoming election. But we have been friends and I hope this turns out to be the same way at the end of this election.

I understand that testimony has also been submitted on behalf of the City of St. George. I have always held a special place in my heart for the people of the Pribilof Islands because of their treatment at the hands of their own government.

In fact, it was my legislation, in 1983, which set up the Fur Seal Act amendments and the Trust Fund for the people of the Pribilof islands. Since then, I have worked closely with the people of the Pribilofs on matters related to economic development, including funding for the airports, harbors and other economic and social pro-

grams, as well as attempting to work on fishing allocations. Theirs is a special case because of the fact that the government ran the island, including their economy, until turning the lands over to the people of the Pribilofs, and it appears that they continue to get a raw deal from the government.

I just don't think it is fair that the government who gives the lands and real estate to Alaska Natives to extinguish their land claims, and when it turns out they are loaded with toxic or radioactive wastes or other wastes the government says, "Sorry, they are yours now." This is not in good faith. The good people of St. George and St. Paul deserve better treatment from their government, as do the Alaska Natives throughout the State. That is why I would like to work closely with you, Mr. Chairman, to fashion a resolution to dumps and wastes on Lower 48 and Alaska Native lands, and I look forward to doing so.

Mr. Chairman, just on the local level, we also have Federal standards on open dumps that require these small villages with no economic base at all to meet certain standards. The money is not there, however, the desire is there. But, it is the inability of them to meet these Federal standards that threaten many of our local villages, from having to compete with the Federal standards on open dumps.

Thank you, Mr. Chairman for this opportunity to testify.

Mr. RICHARDSON. I thank the gentleman.

Again, we will ask the witnesses to summarize their statements in 5 minutes.

We will first proceed with Mr. Gary Hartz, Director, Division of Environmental Health, IHS, Department of Health and Human Services.

Mr. Hartz is accompanied by Mr. Thomas Crow, Chief of the Branch of Environmental Health Services of the IHS, and Dr. Richard Barror, Chief of the Branch of Sanitation Facilities Construction.

Mr. Hartz, please proceed.

STATEMENT OF GARY J. HARTZ, DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH, OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY THOMAS CROW, CHIEF, ENVIRONMENTAL HEALTH SERVICES BRANCH, INDIAN HEALTH SERVICE, AND DR. RICHARD BARROR, CHIEF, SANITATION FACILITIES CONSTRUCTION BRANCH

Mr. HARTZ. Thank you, Chairman Richardson, and Mr. Young.

The Indian Health Service has long been involved, through the Sanitation Facilities Act of 1959, in addressing the needs of water, sewer and solid waste, as well as the establishing and equipping of operation and maintenance organizations.

The priorities that are given to those respective aspects of improvement to the environment have more specifically been laid down in the Health Care Amendments of 1988, which outlined various levels of deficiency that we are to rank the projects as funds are appropriated for the Public Law 86-121 activities.

In that regard, the solid waste issue is identified as Deficiency Level 3 under current authorities, and as a consequence, because of that plus the relative public health impact that it carries in comparison to lack of water and sewer facilities is still very prevalent throughout all of Indian country, that these projects have not received the same level of attention that water and sewer projects have.

The Congress has been very generous in the appropriations since the implementation of 121 and then subsequently to the Indian Health Care Amendment and its amendments. Through 1994 the appropriations have been in excess of \$1.1 billion.

The last few years the appropriations for sanitation facilities have also increased as well as the amount going for solid waste, because of the laws that have been passed and the increasing priority that the tribes and the Federal Government are putting on it. It received additional funding, up to now about \$7 million over those 2 years, 1993 and 1994.

The total appropriation that we received last year was right at \$85 million. Approximately 4 million of that will go towards solid waste.

The other needs, as I mentioned are quite grave. The universe is about \$1.7 billion, and of that total approximately \$141 million of it is for solid waste purposes.

We have testified before the Senate regarding this particular legislation and, as they indicate in their report, there have been some modifications based on our informal technical assistance.

And I think it is of note that the way that the bill is currently crafted that the authorities for this bill would require that there be separate funding because of the recognition of the tremendous needs that currently exist in Indian country for sanitation facilities under the authorities of our current laws.

Couple of points that we would like to make regarding the bill that is before you, and that you are considering, is that the solid waste management plan should be looked at for any entity that is being considered for closure of these dump sites. We are very concerned that by just looking at closure and the resulting post-closure maintenance is not necessarily looking at the whole picture.

So your comments, Mr. Chairman, as you led off, we concur with wholeheartedly about the need to look at solid waste management plans as the initial step in leading into the actual closure.

And as far as post-closure maintenance is concerned, we believe that one can with reasonable accuracy estimate the cost of actual closure. That is something that we believe is finite. That is something that once the closure is done it is completed.

The costs associated with the post-closure maintenance is of a concern to us because the Federal Government would be continuing its ongoing responsibility ad infinitum to pay for the cost of the post-closure maintenance. And furthermore, we are uncertain—because of inadequate experience at this point in monitoring and taking care of that maintenance, we are really not sure what the amount is going to be.

As you have indicated, we would like to have the full text of our testimony submitted for the record.

Thank you.

Mr. RICHARDSON. I thank my friend.
[Prepared statement of Mr. Hartz follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT OF

MR. GARY J. HARTZ, DIRECTOR

DIVISION OF ENVIRONMENTAL HEALTH

OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING

INDIAN HEALTH SERVICE

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

HEARING ON THE INDIAN LANDS OPEN DUMP CLEAN-UP ACT OF 1994

JULY 26, 1994

TESTIMONY OF DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH
OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING
INDIAN HEALTH SERVICE

Mr. Chairman and Members of the Committee:

I am Gary Hartz, Director, Division of Environmental Health accompanied by Mr. Thomas Crow, Chief of the Environmental Health Services Branch and Dr. Richard Barror, Chief of the Sanitation Facilities Construction Branch. We are pleased to be here today to discuss with you S.720, Indian Lands Open Dump Clean-up Act of 1994.

The goal of the IHS is to raise the health status of more than 1.3 million American Indian and Alaska Native (AI/AN) people to the highest possible level. In order to achieve this, the IHS has a threefold mission: 1) to provide or assure the availability of high quality, comprehensive, and accessible health services; 2) to provide increasing opportunities for Indians to administer their own programs; and 3) to serve as a health advocate for Indian people. As part of this mission, the IHS is committed to promoting a healthy environment including the construction of essential sanitation facilities, as well as advocating for proper public health practices and assisting in the resolution of environmentally-related health concerns. In FY 1993 the IHS assisted in the provision of essential sanitation facilities to over 8,200 Indian homes and provided over 160,000 environmental health services to Indian homes and communities.

The availability of sanitation facilities and improved housing is widely credited with significantly contributing to the remarkable improvements in the health status of the American Indians and Alaska Natives since 1955 when environmentally related disease death rates ranged from about 3 to 7 times the U.S. All Races rates. Since the passage of the Indian Sanitation Facilities Act, Public Law 86-121, in 1959, more than 196,000 new, renovated, and existing AI/AN housing units have received sanitation facilities for the first time. These services have included the construction of systems to provide safe individual and community drinking water, as well as sewage and solid waste collection and disposal facilities. During this period, Congress has appropriated more than \$1.1 billion to the IHS for this purpose. These environmental services along with the improved availability of health care services have yielded the following health improvements since 1972-74:

- 1) The infant mortality rate for American Indian and Alaska Natives decreased 50 percent.
- 2) The age-adjusted tuberculosis death rate for American Indian and Alaska Natives dropped 76 percent.
- 3) The age-adjusted injury death rate dropped from 216.0 to 93.1 in 1987-89, a decrease of 57 percent.

- 4) The age-adjusted gastrointestinal death rate decreased 80 percent.

A small percentage of the \$1.1 billion has been spent by the IHS on the development of solid waste collection and disposal facilities because of higher public health priority on water supply and sewage disposal problems throughout Indian country. This priority, consistent with tribal desires and legislative mandates, has been reflected in expenditures over the years which have been directed primarily to water and sewer projects.

Public Law 86-121

The provision of sanitation facilities to safe, adequate housing has enhanced and extended the lives of tens of thousands of American Indians and Alaska Natives. The primary authority for the IHS to provide necessary sanitation facilities and services is section 7 of the Transfer Act (as amended by the Indian Sanitation Facilities Act), which authorizes the IHS "to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage and waste disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities and lands;"

Indian Health Care Amendments of 1988

The Indian Health Care Amendments of 1988, P.L. 100-713, reaffirmed the primary authority and responsibility of the IHS to provide the necessary sanitation facilities and services as provided in section 7 of the Indian Sanitation Facilities Act.

In section 302(g)(4) of the Indian Health Care Improvement Act, Congress identifies five sanitation deficiency levels (Level I - Level V) for Indian homes and communities with Level V being the most serious deficiency level. Level V is defined as an Indian tribe or community that lacks a safe water supply and a sewage disposal system; Level IV is defined as an Indian tribe or community that lacks either a safe water supply system or a sewage disposal system. The lack of a solid waste disposal facility is identified as a Level III deficiency. Systems with Level II and Level I deficiencies comply with all laws, but need capital improvements or have deficiencies related to routine repair and replacement.

Section 302(c) of the Act required the IHS to develop and begin implementing a 10-year plan to remedy these sanitation deficiencies in Indian country. The 10-year plan was included in the Second Annual Report to Congress on Sanitation Facilities Deficiencies for Indian Homes and Communities dated March, 1990, and revised in the fourth annual report dated February 1992.

Priority for funding in the 10-year plan is determined in large part by the health effect and the potential for reducing health care costs by preventive health measures as stated in subsection 302(a)(3) of the Act. Funding required to correct solid waste deficiencies are included in the 10-year plan, however, based on health considerations, projects to provide water supply and sewage disposal facilities generally have higher priority for IHS Indian sanitation facilities construction funds than solid waste disposal facilities.

Current Funding for Solid Waste Facilities

During the past two fiscal years approximately \$170 million (FY 1993 - \$85 million and FY 1994 - \$85 million) have been appropriated for the construction of sanitation facilities. We currently estimate that approximately \$5 million of the \$170 million will be utilized for solid waste management facilities.

Estimated Costs for Solid Waste Facilities

The IHS is also required to provide an annual report to Congress which includes a list of proposed sanitation facilities construction projects, and an estimate of the cost to correct solid waste deficiencies eligible for funding under the sanitation facilities construction program.

Our most recent estimate for these solid waste deficiencies is approximately \$141 million. Approximately \$59 million of the \$141 million is to address solid waste deficiencies in the State of Alaska. The estimate includes solid waste collection and disposal facilities and closure of tribally owned existing sites.

Current cost estimates for correcting solid waste deficiencies have been included in approximately 500 proposed construction projects to serve approximately 125,000 Indian and Alaska Native homes located on over 100 reservations plus 175 communities in Oklahoma and Alaska.

The actual cost to correct the deficiencies may differ substantially from our current estimate because: (1) experience with estimating costs for complying with new EPA solid waste regulations is limited, (2) most estimates are not based on detailed engineering studies, and (3) the costs for the various options to correct solid waste disposal deficiencies may vary substantially.

Project Priority

Each Area prioritizes all their proposed sanitation facilities construction projects by assigning points for each of eight criteria. The priority lists are used to determine relative priority of projects in the Area and are adjusted annually to

reflect current conditions and tribal desires. Project priority is determined, in large part, by health impact and the potential for reducing health care costs by preventing disease.

Some proposed projects provide more than one type of facility such as water, sewerage and solid waste facilities and therefore a separate priority list to address only solid waste deficiencies could not be easily developed from the current data base (Areas would be required to identify all projects to correct solid waste deficiencies as separate projects).

A separate list with its own criteria and scoring procedure may be appropriate to more specifically address health and environmental impacts of solid waste deficiencies.

Technical Assistance

Pursuant to the Transfer Act of 1954, which transferred the responsibility for Indian health care from the Department of Interior to the Department of Health and Human Services, the IHS is also authorized to provide technical assistance and consultative environmental health services to Indian tribes. The IHS maintains a comprehensive environmental health program for American Indians and Alaska Natives utilizing this authority. The IHS may carry out the program directly with Area and field office environmental health professionals or a tribe may take

responsibility for program implementation under the Indian Education and Self-Determination Act.

Technical assistance relative to solid waste management may include: (1) surveys of solid waste disposal sites, (2) assistance with development of tribal codes and ordinances, (3) assistance with development and/or review of management plans, (4) assistance with community education campaigns, (5) training of solid waste program managers and other workers, (6) assistance with identifying funding sources and (7) assistance with evaluating and identifying solutions for operational problems. Assistance is obtained through the IHS Area or field offices. The availability of this assistance is based on current workload and priorities established for the total environmental health program. The IHS environmental health staff includes approximately 475 engineers, sanitarians, environmental health technicians, engineering aids, injury prevention specialists etc. However, the Federal Workforce Restructure Act makes the addition of Federal staff for these programs unlikely.

Solid Waste Disposal Sites

As part of its program of technical assistance IHS maintains a list of solid waste disposal sites located on Indian land which may warrant periodic inspection by IHS environmental health staff in order to adequately advise tribal officials of potential

health effects. The list includes a total of approximately 600 sites, of which approximately 175 are in Alaska and approximately 100 are on the Navajo Reservation. This listing is not a complete inventory of solid waste disposal sites but includes those active reservation sites associated with domestic solid waste systems and may include additional locations identified by IHS where there is potential for adverse health effects associated with solid waste disposal. Proposed projects to correct sanitation deficiencies of tribally owned domestic solid waste disposal sites on this list and tribally owned previously used domestic solid waste disposal site are included in the Indian Health Service list of needed sanitation facilities construction projects. The current IHS information regarding solid waste sites will need to be reviewed to ensure its compliance with section 7(b) of S. 720.

Comments and Concerns

We have the following comments and concerns on S.720 as referred to the Committee on National Resources.

1. We believe that closure of open dumps must be undertaken as part of a total solid waste management plan for the reservation. The first step in site closure requires development and implementation of an acceptable solid waste management system to prevent unauthorized dumping after

closure of the site. The legislation appears to address Indian Health Service responsibilities for site closure and maintenance as an issue separate from solid waste management planning. A demonstration project should not be approved until a plan and funding for implementation is in place.

2. Cost estimates for closure of these sites can be accomplished with reasonable accuracy based upon application of Resource Conservation and Recovery Act (RCRA) criteria and EPA regulations. Accurately estimating future costs for postclosure maintenance is much more difficult. Closure can be accomplished with finite expenditure of funds; however, the need to expend funds for maintenance will continue indefinitely. Because the universe of sanitation deficiencies to be addressed with capital improvement funds is so significant, we believe that long-term postclosure maintenance funding commitments by the Federal Government should be considered carefully and, if authorized, any Federal share established should be limited and not to exceed 2 years.

This concludes my opening statement. I will be happy to respond to any questions.

Mr. RICHARDSON. The Chair recognizes the gentleman from Alaska.

Mr. YOUNG. Mr. Hartz, I have got interest in the lands that were conveyed to Alaska Natives under ANCSA. Many of the lands they conveyed had high hazardous content, and that is something we can address, maybe, under the Superfund and other things, if we do so, provided we give them the authority.

But the biggest problem I see now is the open dump sites. And I noticed in your testimony, you say approximately \$59 million would be needed to clear the solid waste deficiency in the State of Alaska. How do you envision this working?

I can use my hometown, Port Yukon for example. We have an open pit site, have had if actually we have two of them, by the way. That are very well run. Very efficient.

But, if we close the site now, it is my understanding that they are going to ship the garbage to a central point in Nenana to be disposed of.

But what happens in the interim period of time—this is not nice to say—to the dead dogs and the pampers and whatever else goes into a dump? What happens over that period of time? We have two ships a year that take wastes out of Ft. Yukon.

How is that going to be done? And who is going to pay the bill? We don't have an economic base in Ft. Yukon to pay for this.

I mean have you got a plan or an idea?

Mr. HARTZ. Currently, Congressman Young, we are looking at the package that has come to us from the Senate, and we are continuing to review that to look at alternatives.

The problems that are presented by the State of Alaska and the requirements that are being imposed by RCRA and the subsequent regulations are very, very onerous on the small rural communities, whether you are speaking to the small communities on the Navajo Reservation or those in Alaska or whether they are in North Dakota. It is very difficult for communities to deal with these problems, Indian or non-Indian, Alaska Native or non-Native.

You know, we are having to look at a lot of alternatives, and we are going to be tapping into the expertise of EPA who was involved in promulgating these regulations.

Mr. YOUNG. But are you going to be an advocate, though? See, what I am worried about, in this Congress—the chairman will agree with me—we do these great and grandiose things, but the EPA keeps telling my Ft. Yukon City Council they are going to go to jail if they don't close the pit.

Someone has to come up with not only the money, Mr. Chairman, there has to be someone there to be the advocate for those people, to say this is how this program will work, or they are not going to do it. I mean there is no way.

I am reading this testimony on the Red Lake, and it says right here they are only 80 miles away from a State-approved landfill and the estimated cost is \$300,000 in transportation. And I agree with them. It probably costs that or more. And we have the same problem in Alaska. And there is no economic base at all on the Red Lake nor in our area to take and pick up that expense. Yet, we are being told by the Federal Government we have got to meet these Federal standards.

I agree with you. I think there is a higher priority, by the way. I think there is a higher priority in water, in sewerage, in health care than there is in these dumps.

There may be another way of doing this. You know, we have had landfill dumps in every State I know of, or in cities huge dumps, all these years, and they have been run very appropriately. And I think the ideal, plan we can do, is instead of removing it or closing it, would be a better management system, with a little assistance to these smaller villages so they can handle this problem, or Congress will have to come up with the money.

But we need somebody to monitor this process. It is not going to be the BIA, by the way. I mean they will shove it off to you and then you may shove it off to EPA and the EPA will shove it off to the Corps of Engineers and they will shove it off to the State.

In the mean time, I have got these small villages sitting there and they don't know where to go. And, by the way, they will be threatened, because they haven't met the Federal regulations.

Mr. HARTZ. Well, we are pleased with the confidence that the Senate appears to have shown, and that you folks have shown in giving us this responsibility. I am not so immodest to assume that we can take on this without some difficulty.

And furthermore, we have some ideas but they are to the point where I would like to look at them more technically before I would espouse a number of different thoughts on how to deal with it, sir.

One of the concerns that I have is the interpretation that everything has to be closed. You know, there might be some alternatives to dealing with sites as they exist today as long as there is monitoring that does take place. If landfills fall within the exemptions of the 20 tons per day in a semiarid location, they are exempt from the requirements till October of 1995.

Well, that has been extended now a couple of times. I am not here to advocate for an extension, but there are things we need to look at to deal with the special circumstances of the coastal communities in Alaska.

Mr. YOUNG. I agree with you, Mr. Hartz. I just would suggest that you, as a leading agency in this, and we do think you have the ability to do it, has to come up with some alternatives. But discuss it with the villages that are affected.

See, we have an arid area, for instance. We have no aquifer at all. We have managed that site fairly well. I think it could probably be managed a little better, with a little expertise and maybe a little extra money, we might be able to handle it a little better than we have in the past.

But we cannot afford, and I have about 175 of these villages in Alaska that has no economic base at all. But they are receiving letters now, the Tribal Council is if it is a Tribal Council and if it is a City Council, they are receiving these letters from the EPA and the State and the DEC and everybody else and these villages and councils are very concerned.

Like you say, maybe there is a better way of doing it other than having the Federal Government saying this is what you have to do or you are going to go to jail. This is the thing I object to.

Again, we will back you up to the best of our ability. I hope that we can appropriate money. I am not terribly optimistic sometimes because sometimes money get sent to other places.

But please be aggressive in this. That is all I am asking. Be the aggressor.

We have given you the charge, so come to us and ask for help. Come with some ideas. I don't blame you for not bringing them up today, but come with some alternate ideas so we can meet this challenge of safety and health and to the benefit of these villages. That is all I am asking.

Thank you, Mr. Chairman.

Mr. HARTZ. And we have the backing of the mission of the Indian Health Service that, you know, we will advocate for the improvement of health and the environment. And I thank you for your comments, sir.

Mr. RICHARDSON. Let me say to the gentleman from Alaska I agree with him. I think we have to have resources to deal with this issue, not just policy, and I will work with the gentleman to include Alaska Natives.

It just seems that we keep excluding people. I know you have a resources problem. But I think the gentleman is right. You have to show leadership, and we will help you do that.

Let me ask you, Mr. Hartz, why is there such a discrepancy in the number of dump sites? You have testified that there are 600 open dump sites on Indian lands. Yet testimony by the National Tribal Environmental Council, which will be testifying after you, says there are 1500 sites, 400 on Navajo alone. What is the discrepancy here?

Mr. HARTZ. I am not here to challenge their numbers, but I can tell you how I believe that there could be some differences. For one thing, the definition that one would use for what is a dump site has typically been the major problem. I know from past testimony of the Navajo Nation, depending on the definition that is used, it ranges anywhere from 130 to 1000 sites on the Navajo Nation alone.

So, it really comes down to, Mr. Chairman, what criteria you are using, and we have used the criteria in our 600-plus sites of active sites that routinely and regularly are being utilized for the disposal of solid waste.

And then in the Senate version that is before you, I guess I would have to say it seems to track a little bit closer to the definition that we would be using as they identify the size of the site being a half acre. There are a lot of individual sites that are very, very small that a private family might be using that could very well be part of that large inventory.

One other comment I wanted to address, and maybe I was misunderstood in some of my earlier responses. I do not believe that the Alaska villages are exempt from this current legislation based on the actions of the Assistant Secretary of Interior that designated the Alaska villages as Federally recognized tribes.

And, as a consequence of that, it was my understanding that they would qualify under this particular legislation. But I stand to be corrected on further review of you gentlemen.

Mr. RICHARDSON. The gentleman from Alaska has another hearing, and I will defer my question time to him if he wishes.

Mr. YOUNG. No, no question. Just on this—there are two things. In the Senate bill S. 1686 they refer just to ANCSA lands, and it was put in specifically, primarily for toxic waste.

Because we have like in the Bethel area toxic sites that have, of all things, asbestos. Some Native Corporations lands have been told they have asbestos in buildings and. It costs them \$2 million to knock a building down. It is more than the land is worth, and we think that is very unfair.

If it is an agency that transferred that land, then, in fact, the agency should take the responsibility of removal of whatever toxic wastes was left there by a Federal agency, especially if it is toxic. Natives shouldn't be held responsible.

We can address the other issues of the qualifications under the substitute the chairman is going to be introducing. So, I don't think there is any dispute with your statement at all.

I do apologize, Mr. Chairman. I have to go to Post Office and Civil Service Committee.

Mr. RICHARDSON. I thank the gentleman.

We have to make sure in the substitute amendment, we include Alaska lands because the Senate language, I am informed by the staff, does not include them. It leaves it rather unclear. So, this is something that we will do.

Are you basically stating that, in your judgment, Alaska lands should be included?

Mr. HARTZ. Not only in my judgment do I believe they should be included, but based on counsel—because I expected this question might come up, counsel has advised me that they are included. So, if not, we certainly concur in any amendment that would address that.

Mr. RICHARDSON. Do you agree there is a trust responsibility to protect Indian tribes and their lands from environmental degradation?

Mr. HARTZ. You have ventured into an area that is beyond my purview as an engineer regarding the law and trust as it applies to Indian land and as it relates to the environment. I defer to the Bureau on that. And if that is not satisfactory, I will have to provide it for the record, sir.

Mr. RICHARDSON. The answer is overwhelmingly yes, but I know your area of expertise is in something else, so I won't press you.

I don't need an answer from the Bureau on that. I just want everybody in the Federal Government to know this. The answer is yes. We have Federal trust responsibility for these lands and this Congress and this subcommittee will make sure that responsibility is carried out.

You also talked about in your testimony the critical need for tribal waste management, the solid waste management plans. Do you think that we ought to include that in the substitute amendment, a comprehensive solid waste management component?

Mr. HARTZ. I think, as I indicated in my opening comments, and you did as well, that that is an excellent idea. The reason is because I have seen closures occur in the past as a part of the sanitation facilities program that we currently carry out. Without a plan

that adequately addresses the alternative disposal, the waste is brought to the "old" landfill by the constituency. If no one knows where the waste goes after the first of October because that facility will no longer be available, then undoubtedly you are going to have waste being dumped at the gate of the fence of the old site.

I absolutely concur, a hundred percent, with you on that.

Mr. RICHARDSON. Now, you know we have made some progress in the last 10 years on addressing sanitation deficiencies in Indian country. The reports we have is that we are making progress. Would it make sense to develop a separate 10-year plan to address the solid waste needs in Indian country?

Mr. HARTZ. We have found that with the passage of the Indian Health Care Improvement Act and the amendments, specifically, of 1988, where it called out not only a 10-year plan but it highlighted various levels of deficiency, it called for submission of a priority list to the Congress so that you were aware that there was a very formal process by which we were addressing the deficiencies. That has proven to be very, very beneficial in addressing water, sewer and solid waste.

That would likely be as appropriate and applicable to the solid waste alone. There is always that concern as to how these authorities for appropriations would compete with the monies that we already are having appropriated, some of which is going to solid waste.

Mr. RICHARDSON. Now, are there any barriers to the IHS utilizing any Federal, other Federal or non-Federal funds to carry out their responsibilities under this Act?

Mr. HARTZ. I can't immediately come up with any barriers. We have been able to work very closely with EPA on its Clean Water Act set asides for Indian tribes. We have worked with HUD, the CDBG program.

I can give you examples right now where there are funds going to the Zuni tribe from HUD that we are participating in. There are funds going to the Makah Tribe for waste—the Zuni is solid waste. The Makah Tribe for wastewater that involves HUD, IHS and EPA.

I think that the only thing that I could think of, and this is very technical now, in the bill that in one place refers to the use of contract. We have the flexibility of using a lot of mechanisms for assistance through the Memorandum of Agreement, et cetera. That would be something that would provide us with flexibilities other than just using a contract. And that might just be an oversight, but that was one point that I do note.

Mr. RICHARDSON. The Memorandum of Understanding that you are talking about with BIA, EPA, and HUD. Is there any money provided to tribes pursuant to this MOU?

Mr. HARTZ. Okay. You are talking about kind of an umbrella MOU that deals with a lot of aspects of the environment?

Mr. RICHARDSON. Right.

Mr. HARTZ. Is that the one? Okay.

That outlines the relationships of cooperation among the various Federal entities. There specifically is no money in that agreement.

However, we look to projects, and, in fact, we will combine our monies under the current sanitation facilities appropriation with

money from a HUD project that might have a need for off-site water and sewer facilities for new homes. That will involve money. The Bureau might be providing money associated with, you know, some activities that they have going on.

It really lays the groundwork for continuing communication and dialogue.

Mr. RICHARDSON. All right. Well, Mr. Hartz, I am pleased with your testimony. I must say that you seem to grasp the need to deal with this issue. I would like to do a substitute very soon with Mr. Young, and I would hope we can get your cooperation in drafting that. We would want Administration support for it.

I think we have a real opportunity to do some good and we should move. So, with that let me thank you all.

Do any of your illustrious colleagues want to say anything for the record here? Do each of you very briefly want to say anything?

Mr. CROW. No, thank you, Mr. Chairman.

Dr. BARROR. I have nothing to say, sir.

Mr. RICHARDSON. All right.

Mr. HARTZ. Thank you for your time.

Mr. RICHARDSON. Thank you, Mr. Hartz.

PANEL CONSISTING OF SAMUEL L. WINDER, EXECUTIVE DIRECTOR, NATIONAL TRIBAL ENVIRONMENTAL COUNCIL, ALBUQUERQUE, NM; HON. BOBBY WHITEFEATHER, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS, MINNESOTA; SADIE HOSKIE, DIRECTOR, NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY, WINDOW ROCK, AZ; TONY SMITH, ESQUIRE, ON BEHALF OF THE ALEUT NATIVES ON THE PRIBILOF ISLANDS, AK; AND G. CHAD BOWECHOP, ENVIRONMENTAL PLANNER AND MEMBER, ON BEHALF OF THE MAKAH TRIBAL COUNCIL, NEAH BAY, WA

Mr. RICHARDSON. We move on to our second panel, Mr. Samuel L. Winder, executive director, National Tribal Environmental Council, from Albuquerque, New Mexico; the Hon. Bobby Whitefeather, chairman, Red Lake Band of Chippewa Indians in Minnesota—I had the good fortune of meeting Mr. Whitefeather last night; Ms. Sadie Hoskie, director of the Environmental Protection Agency of the Navajo Nation, Window Rock, Arizona; Mr. Tony Smith, Esquire, on behalf of the Aleut Natives on the Pribilof Islands of Alaska, who has worked with us for many years on these issues; Mr. Chad Bowechop, Environmental Planner, from the Makah Tribal Council, Neah Bay, Washington.

Ladies and gentlemen, welcome to the subcommittee.

We will start with Mr. Samuel Winder, executive director, Tribal Environmental Council, from Albuquerque, New Mexico.

STATEMENT OF SAMUEL L. WINDER

Mr. WINDER. Thank you, Chairman Richardson. Greetings from the State of New Mexico.

I would like to thank the Subcommittee on Native American Affairs of the Committee on Natural Resources for conducting this hearing and inviting the National Tribal Environmental Council to testify.

I am the Director of NTEC. This is the first opportunity I have had to testify before a committee of Congress with regard to any legislation, and it is basically a good opportunity to raise some issues of national concern that affect every Indian tribe in the country.

Each tribe has their own unique relationship with the Federal Government. Therefore we are very cautious with regard to any positions that we take on any legislation.

However, after having the opportunity of polling our member tribes on this important measure, I was given the opportunity to pursue giving testimony to this subcommittee.

Just some brief background on the National Tribal Environmental Council before I give my substantive comments. We are a tribal membership organization. Currently, there are 49 tribes from throughout the country that are members of NTEC. Our goal is to assist tribes in developing environmental regulatory programs.

There are four villages from Alaska that are currently members of NTEC, and there are several tribes in the State of New Mexico that are members of NTEC.

To enhance the organization's ability to serve tribal interests, NTEC conducted a National Environmental Review of Indian country. That document is attached as an exhibit to our testimony.

We developed a final report which basically addresses some of the concerns of Indian tribes from throughout the country, and one of those priorities is solid waste and water quality.

I believe that you may have mentioned a number earlier, and we did make a mistake in our testimony. The amount of sites identified by tribes pursuant to our survey was 1603, and that number does not take into account the Navajo Nation, so the number may be even more significant. And this survey only took into account 149 tribes. We sent out this survey document to every tribe in the country, but we received 149 responses back.

As you will see in the document, the survey tool is very brief. It is about 8 or 9 pages. One of the tragedies is that some tribes don't even—they didn't even have a staff person to fill out the assessment. So, that is one of the issues of concern for tribes, not having one person on staff to really assess the environmental problems on their lands.

With regard to S. 720, NTEC is supportive of this measure. We believe it is necessary in order to close a gap in the authority which the Congress has conferred on the Indian Health Service with regard to sanitation facilities.

As Mr. Gary Hartz mentioned earlier, the IHS had made some significant progress in the sanitation and water arena, but with regard to solid waste there are certainly some major problems, and we believe that this measure is needed to fill that gap.

With regard to solid waste management plans, we believe that there should be some language included in this measure that will address the development of solid waste management plans. One of the basic issues with regard to SW&Ps is assessing how many open dumps there are on your reservations if you go through the development of that process.

One of the questions you raised earlier with regard to a discrepancy between our numbers and the Indian Health Service num-

bers, that goes back to the criteria. Certainly those tribes that responded, they sought open dump, dump sites on their reservations and they went ahead and indicated that in the survey, which they went ahead and filled out.

We commend the Red Lake Band of Chippewa for suggesting an amendment with regard to demonstration projects. We believe that there are tribes that have made some significant progress but they need funding to move forward in closing the open dumps.

However, with regard to the demonstration projects, we suggest that there be language included that will ensure that the success of these projects are spread to other tribes.

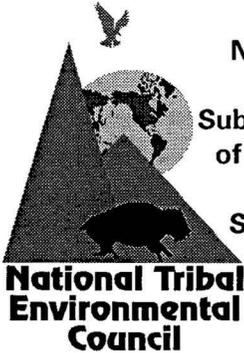
Finally, one of the major issues is funding. How will the Indian Health Service implement the mandate set forth in any measure? There need to be direct funding allocation set aside for any measure developed.

Finally, I would like to thank the chairman for his amendment, his amendment to the Solid Waste Disposal Act. Tribes currently are not treated as States for purposes of the Resource Conservation and Recovery Act, however we are subject to liability. We applaud you for moving forward on that. That will allow tribes to receive adequate funding to address the mandates set forth in RCRA.

We thank the subcommittee for conducting a hearing on S. 720. We recognize that S. 720 will not address all the clean up of open dumps in Indian country, but we believe it will address the gap discussed above. We recommend the bill be passed with the suggested amendments.

Thank you.

[Prepared statement of Mr. Winder follows:]



**Testimony of the
National Tribal Environmental Council
Before the
Subcommittee on Native American Affairs
of the Committee on Natural Resources
Regarding
S. 720, the Indian Lands Open Dump
Cleanup Act of 1994**

July 26, 1994

INTRODUCTION

Mr. Chairman and members of the Subcommittee on Native American Affairs of the Committee on Natural Resources, my name is Samuel Winder, Executive Director of the National Tribal Environmental Council (NTEC). I appreciate the opportunity to provide comments on S. 720, the Indian Lands Open Dump Cleanup Act.

The National Tribal Environmental Council

NTEC was formed three years ago as a membership organization dedicated to assisting tribes in the protection and preservation of Indian environments. NTEC's mission is to enhance each tribe's ability to protect, preserve and promote the wise management of air, land and water for the benefit of current and future generations. Currently membership consists of 49 federally recognized tribes located in fifteen states active in developing tribal environmental programs.

To enhance the organization's ability to serve tribal interests, NTEC based its programmatic initiatives on a diagnosis of the current and anticipated environmental circumstances and needs of tribes. To determine these tribal needs and to ensure that NTEC embodies a comprehensive

response to those needs, NTEC launched an ambitious National Environmental Review (NER) in February, 1993. On May 17, 1994, a National Tribal Environmental Review Final Report (Final Report) was generated which analyzes the responses received from 149 tribes who participated in the review (Exhibit 1).

The NER findings suggest that Indian Country is subject to a broad range of environmental problems including surface and ground water contamination, illegal dumping, hazardous waste disposal, military threats, air pollution, mining wastes, habitat destruction and human health risks. Across the nation, solid waste and landfill issues appeared to be a leading concern among tribes.

An issue which exacerbates the problems in Indian Country is the lack of environmental regulatory programs. For example, the NER findings indicate that only 53% of the responding tribes have environmental regulatory programs. Only 38% of the responding tribes currently exercise regulatory power in the solid waste arena.

As presented in testimony by the EPA before the Senate Indian Affairs Committee, the EPA recently awarded a grant to the National Tribal Environmental Council for the development of a tribal peer match program. The purpose of the peer match program is to identify and match environmental experts in tribal environmental programs nationwide to assist tribes that need specific assistance in addressing their problems.

Background

As the hearing record of S. 720 shows, there are innumerable open dump sites that do not comply with federal regulations. Section 2 of S. 720 states that "there are over 600 open dumps on Indian lands." We believe that this figure is much greater. The Senate Committee Report accompanying S. 720 reports that it is not known with any precision exactly how many open dumps sites are located on Indian lands, the total acreage involved or the overall severity of the threat posed to public health and the environment. The findings of NER discussed above indicate that there are 1503 open dumps in Indian Country. The number of open dumps in Indian Country is

certainly higher since our numbers only take into account 149 tribes. The NER findings also indicate that 30% of tribes listed landfills as contributing to water pollution.

As the Subcommittee is aware, one of the major problems tribes face is the lack of federal funding. Despite the ability to secure necessary funds, tribes, who are not treated as states for purposes of the Resource Conservation and Recovery Act (RCRA), are subject to liability in light of Blue Legs v. EPA, 867 F. 2d 1094 (8th Cir. 1989).

We commend Chairman Richardson for his leadership in introducing H.R. 1267 legislation that would help address this concern. "Treatment as states" status to Indian tribes for purposes of RCRA would authorize Indian tribes to assume primary enforcement responsibility for programs and projects, and to receive direct funding allocations.

Last Congress, the Senate Committee on Indian Affairs spent time and effort on S. 1687, the Indian Tribal Government Waste Management Act. S. 1687 attempted to provide a comprehensive framework for dealing with all of the problems associated with the handling of solid waste on Indian lands. We understand that one of the goals of S. 1687 was to address as fair division of authority and responsibility between the three federal agencies. Although S. 1687 was favorably reported to the Senate by the Senate Indian Affairs Committee, it was not considered further because of objections raised by the Committee on Environment and Public Works, the EPA and the BIA. The Senate Environment and Public Works Committee was concerned about inappropriately amending the Solid Waste Disposal Act. The EPA testified that the conferred authority contained in S. 1687 was not consistent with EPA's regulatory authority. The BIA was reluctant to accept new duties which were imposed.

S. 720, the Indian Lands Open Dump Clean-Up Act

As we understand, S. 720 is limited to the problems of closure and postclosure maintenance of open dumps on Indian lands. S. 720 does not amend or alter existing Federal environmental laws, including the Solid Waste Disposal Act. S. 720 does not impose any new responsibility or

authority on the BIA with regard to the closure and postclosure maintenance of open dumps on Indian lands.

NTEC supports S. 720 which will provide IHS with the authority to respond to request from Indian tribal governments for assistance in conducting inventories of open dumps sites located on Indian lands and assessing the relative risks such sites pose to human health and the environment. NTEC commends the Senate for passing such an important measure. The major concern is whether there will be adequate funding to address the mandates set forth in the measure.

S. 720 is necessary in order to close a gap in the authority which the Congress has conferred on the IHS with regard to sanitation facilities. The IHS has general authority to act to abate threats to public health; it does not operate under any specific authority with regard to closure and postclosure maintenance of open dumps. S. 720 will provide authority and establish an orderly procedure to bring about the proper closure and postclosure maintenance of open dumps on Indian lands.

We believe that this gap must be filled. We also agree that the IHS has a core of qualified personnel with the requisite experience to address these issues. However, we believe it is important that the Subcommittee inform the BIA through report language that it is not relieved of its primary responsibility for the protection of lands held in trust be the Federal Government for the benefit of Indian tribe or individual Indians. In addition, other federal agencies have responsibilities in this arena.¹

There is currently no language in the bill that requires that the IHS provide financial or technical assistance to develop solid waste management plans. We suggest that there be a planning component added that will require the IHS to assist tribes.

¹Three years ago, BIA, EPA, HUD, and IHS signed a Memorandum of Understanding (MOU) recognizing that each has responsibilities and interests pertaining to the protection of the environment and human health as it relates to pollution control on Indian lands. The purpose of the MOU is to identify areas of mutual interest and responsibility of the four agencies and to encourage the coordination of the agencies' respective activities to promote the most efficient and integrated utilization of resources.

Section 5(b) authorizes the Director to establish a small demonstration project to test the cost efficiency of proceeding to implement the Act directly or through Self-Determination agreements and to identify any unusual cost factors associated with closure and postclosure maintenance of open dumps on Indian lands. The section states that no more than three Indian tribal governments will be eligible to participate in the demonstration project and no demonstration project can exceed three years in duration. The four tribes identified in the Senate report are: the Makah Tribe of Washington, the Red Lake Band of Chippewa in Minnesota, the Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota, and the Navajo Nation in Utah, New Mexico, and Arizona. These tribes have all compiled substantial information and achieved high degrees of planning on solid waste issues, including open dumps. However, there are other tribes throughout the nation who may be in a similar position.

We commend the Red Lake Band of Chippewa for suggesting this amendment. The Red Lake Band of Chippewa has been at the forefront of developing plans that are responsible to the unique cultural, political, and physical characteristics of its Reservation and country.

We agree that the demonstration projects could serve as important models for addressing the magnitude of problems in the future. We suggest that there be language included that will ensure that the success of these projects are spread to other tribes.

Finally, we again reiterate that the good intentions of this bill will not be implemented without language for a specific appropriation. We suggest that a specific amount be authorized.

CONCLUSION

We thank the Subcommittee for conducting a hearing on S. 720. Although S. 720 will not address the clean-up of all the open dumps in Indian Country, we believe it will address the gap discussed above. We recommend that the bill be passed with the suggested amendments.

Mr. RICHARDSON. Thank you very much, Sam. We have appreciated all your work on Indian issues over the years. You are a former staff member of the Senate Select Committee on Indian Affairs and worked for our good friend, John McCain, and we are delighted to keep working with you. I, too, would urge you to stay in close contact with the staff as we look at the House version of this bill. As you mentioned, there are perhaps some improvements that can be made. Certainly we have to clarify that Alaska issue, definitely. I think they have to be included in the legislation.

So, Chairman Whitefeather, please proceed. Welcome again. I had the good fortune of seeing you last night, although briefly, on the steps of the Capitol.

STATEMENT OF HON. BOBBY WHITEFEATHER

Mr. WHITEFEATHER. Thank you, Mr. Chairman. Mr. Chairman, and distinguished members of the subcommittee, on behalf of the Red Lake Band of Chippewa Indians I would like to extend our appreciation for allowing us to testify on Senate Measure 720, the Indian Lands Open Dump Cleanup Act.

Mr. Chairman, my name is Bobby Whitefeather. I am the Chairman of the Red Lake Band of Chippewa Indians and have been involved in tribal government for the last 8 years.

The Red Lake Tribe would like to go on record as strongly supporting Senate Measure 720, and on behalf of the tribe I would like to thank the subcommittee for the effort to move the measure forward.

Red Lake is particularly interested in supporting the demonstration project that is identified in the legislation. My remarks will be primarily focused on a demonstration idea, although I would also like to make some other remarks with regard to some of the provisions in the bill.

As was stated before, Red Lake was at the forefront in initiating the idea of a demonstration project, and I think the tribes that have volunteered to come forward and do the demonstration projects have proved that they have the expertise and the mechanisms in place to start post-closure of open dumps.

One of the things that I would like to bring out to the subcommittee is that one of the real fears of Red Lake is with this requirement by the Environmental Protection Agency that all open dumps be closed, with possible sanctions, fines, what have you, that the lack of a tax base of Indian tribes, lack of financial resources, that there is quite a possibility that this type of regulatory scheme will prove effect the tribes with regard to their existence, and what I am talking about is possible fiscal termination of some tribes that can't afford to abide by the regulations that are being imposed on Indian tribes.

Our tribe also requests that there be Federal funding assistance to assist us in cleaning up this very dangerous issue of solid waste. And I think also solid waste is just the tip of the iceberg on some of the potential problems that are on reservations. There could be possible existence of toxic wastes, that type of thing, that is out on Indian lands that we may not know about.

On Red Lake we have three major solid waste landfills. We have already closed two where we do not allow any more dumping. And

we have also developed the tribal solid waste management plan that we are currently continuing to refine.

Within the scope of the management plan, we have placed monitoring wells at the existing open dumps. And this was with the assistance of some funding from Environmental Protection Agency. However, that is just the beginning of some of the work we are trying to accomplish in addressing our solid waste issue.

As I stated before, the estimated cost for the closure of the unapproved landfills that we have our estimate is \$435. And with that kind of cost, the Red Lake Band is not that financially fortunate to expend that type money, because, as you well know, throughout Indian country we are in the same position where we do still have high unemployment, lack of housing, and all the other problems that a lot of Indian tribes face.

We have also used some recycling as a beginning to address the issue. As I have stated before, we have identified what it is going to cost the Red Lake Tribe to take care of the solid waste issue. Our nearest solid waste incinerator is 80 miles. The nearest approved landfill is 135 miles.

I must stress again to the committee that Red Lake does support the demonstration project of S. 720, and we are ready for action. We have enacted a solid waste management code in anticipation of some of the things that are going to be coming up that Indian tribes are going to be required to abide by according to EPA standards.

We would like to thank the committee for its support, and Red Lake is ready to work with the other demonstration tribes as a pilot project to kind of lead the way for other tribes in addressing this very serious matter.

Thank you, Mr. Chairman.

Mr. RICHARDSON. The Chair thanks you, Mr. Chairman.

[Prepared statement of Mr. Whitefeather follows:]

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

DIVISION:

TRIBAL COUNCIL
Organized April 18, 1918
Revised Constitution & By-Laws,
January 6, 1969

OFFICERS:
BOBBY WHITEFEATHER, Chairman
JUDY ROY, Secretary
JAMES GUSH STRONG, Treasurer

DISTRICT REPRESENTATIVES:
ROMAN F. STATELY, JR.
PABIAN COOK
LARRY DUDLEY
PRESTON GRAVES
LAWRENCE BÉDEAU
ALLEN ENGLISH, JR.
TOM J. STILDAV, JR.
CLIFFORD C. HARDY

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

CHIEF COUNCIL OF 1889
May-dway gwa-no-mind
Nah-gaur-ne-gem-she
Mays-co-co-aw-ay
Ahnah-me-ay-ge-shig
Naw-ay-tah-mooh
Nah-wah-quay-ge-shig

STATEMENT OF THE HONORABLE BOBBY WHITEFEATHER, CHAIRMAN RED LAKE BAND OF CHIPPEWA INDIANS

Regarding S. 720 -- the "Indian Lands Open Dump Clean-Up Act of 1994"

Before the House Subcommittee on Native American Affairs
July 26, 1994

Mr. Chairman, and distinguished members of this Subcommittee, thank you for this invitation to comment on behalf of the Red Lake Band of Chippewa Indians on S. 720, the "Indian Lands Open Dump Clean-Up Act of 1994."

We thank you and the members of the Subcommittee for your continuing interest in this critical issue.

Red Lake strongly supports S. 720 and urges continued commitment on the part of this Subcommittee to assist us in our clean-up efforts. We on the Red Lake Reservation live with these dumps day after day. They surround us and threaten to poison our Earth. Clean-up is obviously in our own best interest and that of the Reservation we hold dear.

The dumps themselves are not the only threat to our Reservation. Also threatening our Reservation are federal laws and regulations coming out of the Environmental Protection Agency (EPA) that will cost our tribal government great sums of money because they impose clean-up costs on Tribes. These so-called "unfunded federal mandates" could bankrupt Tribes like Red Lake.

Red Lake Enterprises: Red Lake Sawmill, Red Lake Fishing Industry,
Red Lake Bingo, Red Lake Builders, Chippewa Trading Post-Red Lake & Ponemah

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS
PRESENTED BY THE HONORABLE BOBBY WHITEFEATHER, CHAIRMAN
JULY 26, 1994 HEARING OF THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
REGARDING S. 720, THE "INDIAN LANDS OPEN DUMP CLEAN-UP ACT OF 1994"

Unlike state and local governments, tribal governments have no tax base to speak of. We have systematically high unemployment rates. Our unique relationship with the United States means that tribal governments like Red Lake must have the active funding support of federal agencies in order to carry out our responsibilities to clean-up these sites. Our claim for federal funding is very reasonable, considering the fact that much of this dangerous waste accumulated on our Reservation under the watch of our trustee, the United States government.

Not so many decades ago the federal government's policy was to terminate Indian Tribes. Today, the federal government's practice of imposing on Tribes legal requirements, without the necessary funding, runs the risk of financially ruining tribal governments. Fiscal termination is no better than political termination for our people.

Red Lake strongly supports S. 720 as passed by the Senate and urges this Subcommittee to adopt a similar measure and secure its passage as soon as possible this year. S. 720 would help implement the federal government's trust responsibility to Tribes by enabling Tribes to begin the process of cleaning up these cancers from our lands.

Red Lake especially supports the demonstration project provisions added by the Senate Committee to S. 720 at the request of the Red Lake Band. Red Lake has the administrative management capacity to carry out such a demonstration and to make it work as a model for other Tribes. I will spell out in more detail our demonstration proposal at the end of my testimony, but first I wish to outline some of the special considerations involved with the Red Lake Reservation.

A. Red Lake Reservation.

The Red Lake Indian Reservation is relatively large with a rich natural resource base. We have over 800,000 acres of tribal trust land and water. Of this, we have 429,000 acres of forest lands, 250,000 acres of lakes, and 126,000 acres of wetlands. We have over 55 miles of rivers and streams on our

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Reservation. Our Reservation has currently invested more than \$1 million in waterfowl management.

Most of the acres which make up our so-called closed Reservation have never been broken into allotments nor lost to non-Indians. The remainder of the acres are in scattered lands that stretch north of the main Reservation to the Canadian border. The largest of these scattered lands is a tract known as the Northwest Angle, which is located along the international border with Canada.

Public Law 83-280 does not govern our Reservation. This means the Red Lake Band and the United States government have full civil and criminal enforcement responsibilities for the Red Lake Reservation. The State of Minnesota has no such responsibility or authority over our lands.

Approximately 5,500 tribal members live on the Reservation; some 2,200 members now live off the Reservation. Human activity on the Reservation is concentrated in and around the four communities of Red Lake, Redby, Ponemah and Little Rock.

Lower Red Lake, located entirely within the Reservation boundary, is one of the freshest inland lakes in the United States. Many tribal members, especially those in the Ponemah community, survive on a traditional subsistence economy of fishing. Protecting the water quality of our lakes and streams is of vital importance to the survival of traditional ways, and to the economic livelihood of our Tribe's membership.

B. Current Landfill Conditions on the Red Lake Reservation.

The Red Lake reservation contains three major municipal solid waste landfills. These landfills were first established over ten years ago and are of the old-generation type known as open burn dumps. The Red Lake Tribal Council began to assess the status of these dumps and to begin development of a tribal solid waste management plan in 1990. Our goal was to identify and begin to address the concerns raised by our solid waste disposal system. The

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Red Lake Tribe's efforts have been at the forefront of tribal government actions to carry out good solid waste management plans.

One result of our efforts has been the construction of sixteen groundwater monitoring wells which continuously monitor water quality. This infrastructure has been in place now for quite some time. The recurring data it produces indicates the presence of volatile organic compounds. Fortunately the concentration levels we have discovered have not yet begun to exceed the maximum contaminant levels.

Our greatest concern with the dumps as they currently exist is the threat of contamination they present for groundwater and storm water runoff. This contamination endangers the quality of our drinking water supplies and the fish and wildlife affected by our nearby lakes and streams. Our dumps also endanger our air and attract flies, vermin and cause other health problems to humans and the general ecosystem surrounding these dumps.

C. The Red Lake Tribal Council Has Already Begun to Close Reservation Dumps.

Red Lake's goal is to shut down, on a permanent basis, the three dumps currently operating on the Reservation as soon as possible. The Tribe has barred two of the dumps from accepting any further waste but has been forced to maintain operations at the remaining dump for lack of an alternative disposal program that is both economically and programmatically feasible.

In preparation for the permanent closure of all three dumps, the Red Lake Band has developed a detailed Closure/Post-Closure Plan. The Plan has selected a cover cap design that reduces percolation of water through the wastes, is stable, withstands waste consolidation, promotes uncontaminated runoff, and does not erode. The Plan also specified the need for the installation of vent caps and vapor monitoring wells to handle the production of methane gas. The estimated cost of this closure activity is \$435,000.00.

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D. S. 720 Authority and Accompanying Funding Is Critically Needed.

A top priority for our Tribe is the continued protection of our water quality and the health of our Tribal members. The Red Lake Band, however, lacks the necessary funds to carry out critically needed dump closure activities. S. 720 would provide specific authority that would permit these closure activities to be taken at once either directly by the Indian Health Service (IHS) or by the Red Lake Band under Self-Determination Act contracts or grants with IHS.

Red Lake has approached both the Indian Health Service, a federal agency mandated to provide sanitation facilities and other public health infrastructure systems, and the Bureau of Indian Affairs repeatedly for funding assistance in closing its Reservation dumps. But because of lack of funding, IHS has been unable to provide even the most basic of services on our reservation. The BIA has been somewhat more responsive, providing the Red Lake Band with limited financial support. In fiscal year 1992, BIA provided \$60,000 to make a modest beginning at our Phase 1 closure activities for cleanup and waste consolidation. In fiscal year 1993, BIA provided another \$40,000 for dump clean-up activities, as well as solid waste planning, construction and program activities.

But the basic problem is this. We have cost effective plans to close our dumps but no funds to carry out those plans. At the same time, the Tribe must deal with a federal mandate, under the Solid Waste Disposal Act and regulations promulgated thereunder, to have cleaned and closed these dumps by April 9, 1994 and to operate any new municipal solid waste land fills on our Reservation under strict and costly requirements. Red Lake, like most if not all Tribes, has been unable to comply with the April 9th deadline.

After our Tribe acts in compliance with federal requirements to close its dumps, the Red Lake Band faces the continuing challenge of instituting measures that will reduce its solid waste stream and provide proper disposal of the remaining solid wastes. Red Lake is beginning to develop our tribal environmental infrastructure but we are doing so after years of being ignored

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and isolated as federal funds have gone to states and localities in the form of technical assistance and infrastructure grants. Only recently have Tribes been treated as states in various environmental bills and we are only beginning to gain access to the resources of the U.S. Environmental Protection Agency.

E. The Biggest Challenge Comes After Red Lake Closes Its Dumps.

We encourage the quick passage of S. 720. Our action, however, must not stop there. Additional federal legislation should be passed immediately following enactment of S. 720 that will provide authority and funding to other Tribes like Red Lake whose Reservations are located in remote rural areas in the northern United States.

Due to our region's heavy precipitation patterns, harsh winter weather, and geological formations, we are required by definition to meet the most strict of the U.S. EPA municipal solid waste landfill requirements. Given our sovereign status, we have as a Tribe few if any feasible alternatives to a tribally operated landfill. If we do not operate an on-Reservation landfill in compliance with federal regulations, we will need to ship our solid waste off the Reservation. The nearest solid waste incinerator is 80 miles away. The nearest state approved landfill is 135 miles away. The costs of using an off-Reservation site are prohibitive. We have received cost estimates ranging between \$250,000 to \$300,000 for transportation and tipping fees alone. In addition, to comply with regulatory requirements, we would need to construct at least two transfer stations on Reservation (estimated one-time cost: \$230,000), purchase necessary transportation vehicles (estimated one-time cost: \$250,000), and assume an annual operation and maintenance cost of \$120,000. These costs could only go up, and an off-Reservation system raises additional implications of future cost liability for closure and clean-up activities at sites we do not control.

By far the most preferable direction for the future is to provide adequate federal funding for Tribes like Red Lake to take care of our own solid waste stream, in ways that are appropriate to each Tribe's scale of operation, cultural values, type of waste, and geographical characteristics. We at Red Lake are committed to reducing the solid waste we generate and to disposing what we

<p style="text-align: center;">TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS PRESENTED BY THE HONORABLE BOBBY WHITEFEATHER, CHAIRMAN JULY 26, 1994 HEARING OF THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS REGARDING S. 720, THE "INDIAN LANDS OPEN DUMP CLEAN-UP ACT OF 1994"</p>

generate in a safe and environmentally-sound manner that does not threaten future generations. For example, Red Lake has enacted a comprehensive solid waste code as part of our tribal law, and has instituted a Reservation-wide recycling program.

F. Authorization of a Demonstration Program.

The demand by Tribes across the United States for federal appropriations to carry out dump closures will sharply increase as the comprehensive inventory authorized under S. 720 is completed and a priority list is established to determine the order of closure of such dumps.

There are, however, dumps which are currently ready for closure on several Reservations, including the Red Lake Indian Reservation. The severity of the threat to Red Lake's community health and the environment created by these dumps has already been assessed. Red Lake has cost-effective closure plans already drawn and cost estimates in place. Everything is ready for action -- action that does not need to wait for years to go by as a nation-wide inventory and assessment process is administered by IHS.

Red Lake strongly supports a demonstration project that provides for early closure by a few, selected tribal governments of the dumps on their Reservations. Such a demonstration would serve as an important model for taking the massive action later required for virtually all Reservations.

The Red Lake Band has been at the forefront of Tribes in developing Reservation dump closure plans that are responsive to the unique cultural, political, and physical characteristics of its Indian Reservation and community. Red Lake would be a model demonstration Tribe for these purposes.

Red Lake first proposed the idea to the Senate Committee, and now fully supports the S. 720 provision providing authority for a demonstration project that will fund, on a competitive pilot project basis, the closure of a few dumps on a few Reservations which already have cost-effective closure plans and that will also fund the development of replacement disposal systems on those

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Reservations which have a solid waste plan for cost effective solid waste disposal. It is our sincere hope that demonstration projects could begin as early as F.Y. 1995.

Demonstration authority in S. 720 could do two things. Initially, it could permit Tribes like Red Lake, who are poised to move quickly, to pave the way for other Tribes. The demonstration experience at Red Lake and other pilot Reservations could be evaluated in order to guide larger scale efforts in the future with Reservations across the United States. It could show other Tribes exactly what infrastructure and plans are necessary prerequisites for cleanup and development of cost-effective replacement systems.

Secondly, and perhaps most importantly to a Tribe like Red Lake, a pilot project could provide a real opportunity to show that Tribes can administer these activities themselves under Public Law 93-638 Self-Determination contracting authority with IHS. In this way Congress could help deter the bureaucratic tendency to retain power and funds within the control of the federal bureaucracy on new initiatives like dump clean-up and instead encourage IHS to contract with each Tribe wanting to control this effort themselves with IHS funding support.

A new IHS bureaucracy with solid waste engineers and experts is not necessary for the success of this project. Red Lake already has its own, Reservation-based, tribal engineering and environmental staff who have received training in solid waste management, landfill design, and landfill closure and post-closure care. Additional technical expertise could be purchased locally within Reservation areas by Red Lake or any other Tribe. We think a pilot project that included Red Lake would help chart an effective, tribally-controlled path for this effort.

Red Lake applauds the inclusion in S. 720 of the authority to establish demonstration projects. However, we commend to the Subcommittee's

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attention the following language we initially provided to the Senate Committee and urge you to consider adopting its more express requirements for the demonstration project --

SEC. 8. DEMONSTRATION PROGRAM.

Within 180 days of enactment of this Act, the Director shall select and fund no fewer than six Indian tribes, from among competitive applications, to participate on a demonstration basis in a two-year tribally-controlled effort to close dumps on their reservations and develop replacement solid waste disposal systems. A participating tribe shall have already developed a cost-effective dump closure plan and an appropriate solid waste plan for a replacement disposal system. The demonstration experience of participating tribes shall guide the Director in carrying out other duties under this Act.

Red Lake continues to believe that six Tribes, rather than the three allowed for in the Senate bill, would be a more appropriate number of demonstration projects to authorize. There is a high demand among diverse Indian Tribes for immediate action on this issue and there are numerous other Tribes anxious to participate in a demonstration project to close and clean up their open dumps.

Red Lake also is convinced that to be effective the demonstration project should address a Tribe's need to develop replacement solid waste disposal systems. Closing up old dumps fixes old problems that would otherwise threaten the future, but at the same time, Tribes need the support to develop alternative ways of reducing and dealing with future solid waste demands.

Red Lake likewise has concluded that a prerequisite for selection as a demonstration Tribe should be that the Tribe has already developed a cost-effective dump closure plan and an appropriate solid waste plan for a replacement disposal system. Unless Tribes with plans in place are chosen, the demonstration effort would focus on planning and design rather than on carrying out immediate action that can then serve as the basis of study and planning by other Tribes.

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G. Self-Determination Contracting Authority Under Public Law 93-638.

Red Lake strongly supports language in S. 720 that provides express authority to IHS to carry out its duties under S. 720 through contracts with Indian Tribes under Public Law 93-638. We believe Red Lake can move more quickly and effectively under contracting authority than can the federal administrative structure within the IHS, and the challenge posed by those open dumps requires the fastest possible response.

Red Lake also requests that Congress consider extending in the future this same Self-Determination Act contracting authority to U.S. EPA funds. President Clinton has also indicated that this is a goal he supports. We would hope this Subcommittee moves quickly to implement this new direction.

We also suggest that the Committee Report language indicate that it is the intention of Congress that the IHS shall use Public Law 93-638 contracting authority, whenever a Tribe so requests, on all duties arising under S. 720.

H. Conclusion.

Red Lake needs quick enactment of S. 720 so that its work can begin immediately. The risk factors are too great, especially when considering the subsistence economies, cultural factors, and political sensitivities that could be negatively impacted as a result of an open dump releasing contaminate on our Reservation.

Please let us know how the Red Lake Band of Chippewa Indians might assist the Subcommittee in refining and securing passage of S. 720 during this session of Congress. Thank you for this opportunity to be heard.

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Mr. RICHARDSON. The Chair recognizes Sadie Hoskie, Director of EPA Navajo Nation, Window Rock, Arizona.

STATEMENT OF SADIE HOSKIE

Ms. HOSKIE. Thank you, Mr. Chairman. I appreciate the opportunity to testify before the subcommittee today. I am here representing the President of the Navajo Nation, Peterson Zah, who sends his regards and regrets that he can't be here today.

The Navajo Nation also wishes to thank you, Mr. Chairman, for the work that you have done on behalf of not only the Navajo Nation but other Indian tribes nationally in the environmental field, especially in the solid waste area and underground storage tanks.

The Navajo Nation has previously testified before this subcommittee regarding those areas. And today, specifically on S. 720 we appreciate the opportunity to express our support for the legislation, and also to share with you some of the efforts of the Navajo Nation in the solid waste area and what are some of the things that we have done up to now.

We have been talking about doing an inventory, which we have done. We have narrowed the range of solid waste sites. Originally, we were thinking that we had anywhere from 130 to over 1000 sites. Mr. Hartz earlier alluded to some of the problems associated with even doing an inventory, and that is agreeing to the definition of a site, what constitutes a site. We have sat down with IHS and BIA at the local level in Window Rock and we all agreed to what we are going to use as a site.

With that the Navajo Nation EPA of which I am the Director, we also have a solid waste management program within my department. I am here with the Director of the Solid Waste Program, Mr. Marvin Smith. His program led the effort in doing the inventory, and this took us quite some time, as you can gather. The Navajo Nation covers a pretty wide land area, and with the remote, scattered location of homes you almost have an open dump site in every major community, and then in some cases almost with every home site.

So, we have about 400 sites. We are also assessing—have assessed along with the inventory what the contents are in these dump sites, and in some cases we need to go a little more in detail on what is in the sites.

We have also entered into a Memorandum of Understanding with IHS and BIA and I have brought a copy of that for the subcommittee today. It was signed by the President of the Navajo Nation, the IHS Area Director and the BIA Area Director on June 14, 1994. And the MOU basically states that we will work jointly on solving the solid waste problem on the Navajo Nation. That the first item would be to use the list, the inventory list that the Navajo Nation has developed and has as a database.

Secondly, we will devise alternative solid waste management systems for placement, for replacement in the communities where we have open dump sites.

Thirdly, we will close the listed sites where we have placed an alternative for the community to use. Then we will address closure of these sites. Following closure we will cover and remediate such sites as is necessary to comply with Federal laws and regulations.

We did this primarily because we felt that the Federal agencies were addressing just those sites that they felt were theirs, within their administratively withdrawn areas, and ignoring 90 percent of the other sites that are out there that communities, Navajo communities are using.

And in some cases Navajo communities began to rely on these sites that were created by either BIA or IHS, and we felt that the focus was on closing these sites to meet Federal mandates and Federal deadlines and not really concentrating on providing the appropriate disposal facility for a community to use.

And we turned that around to where we are talking about building the facilities first and knowing that we have to comply with certain mandates, but laying out a plan, a rational plan on how we are going to achieve that. And I think that has served the communities a whole lot better than just saying, "Well, we are going to have to do this by October 1995 and you just can't use the site any more."

We also want to express our appreciation for the possibility of our being a demonstration project site. We believe that we are a strong candidate for that since we have completed an inventory, we have a plan, we have sites that are ready for closure right now, and it is really a new area.

We don't know what the costs would be associated with that, and I think as a demonstration model we can certainly work out those questions a whole lot easier and perhaps replicate that in other Navajo communities as well as other tribes.

We really have been working with other tribes sharing information that we have. We have shared our solid waste code and regulations that the Navajo Nation Council approved and shared that with other tribes.

So, thank you, Mr. Chairman.

Mr. RICHARDSON. Thank you, Ms. Hoskie.

[Prepared statement of Ms. Hoskie follows.]

**THE
NAVAJO
NATION**

P. O. DRAWER 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6352-55

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

**Testimony of the Navajo Nation
Before the
Subcommittee on Native American Affairs
of the
House Natural Resources Committee
Regarding
S. 720, the Indian Lands Open Dump Clean-Up Act of 1994**

July 26, 1994

Introduction

Mr. Chairman and members of the Subcommittee, my name is Sadie Hoskie, Director of the Navajo Nation Environmental Protection Agency. On behalf of President Peterson Zah, I appreciate the opportunity to provide the Navajo Nation's comments on S. 720, the Indian Lands Open Dump Clean-Up Act. The Navajo Nation previously testified on S. 720 on October 14, 1993 before the Senate Committee on Indian Affairs (SCIA). The Navajo Nation also expressed its concerns regarding solid waste problems on our lands in a hearing held by this Subcommittee in November of 1993.

The Navajo Nation appreciates the commitment by this Subcommittee in addressing solid waste solutions on Indian lands. We hope that this Subcommittee will extend their commitment by ensuring that S. 720 is passed before Congress adjourns.

The Navajo Nation

The Navajo Nation is the largest and most populous Indian tribe in America with over 219,198 enrolled members. The Navajo Nation encompasses almost one-third of all Indian lands in the lower-48 states, with jurisdiction over 17.5 million square acres within the states of New Mexico, Arizona and Utah (as large as the state of West Virginia).

Within the context of our traditional values, the Navajo Nation is committed to protect, preserve and enhance public health, welfare and environment of the Navajo People. The Navajo Nation, through its Navajo Nation Environmental Protection Agency (Navajo Nation EPA), administers several programs in waste management including solid waste, hazardous waste, and underground storage tanks. The Solid

Waste Management Program (SWMP) of the Navajo Nation, has taken a number of steps to ensure that solid waste facilities existing on the Navajo reservation comply with 40 CFR Part 258 of the Resource Conservation and Recovery Act (RCRA).

However, without adequate resources, physical infrastructure, and authorized funding mechanisms, the Navajo Nation cannot fully implement these and other environmental programs to meet federal mandates. The solid waste problems that plague Indian country require adequate resources for their success. The 110 chapters (Navajo local units of government) are limited by the lack of resources for actual solid waste facility construction, caretaker salary, and operation and maintenance.

Scope of the Problem

The Navajo Nation recognizes the imminent health hazards and environmental impact created from unregulated solid waste disposal and other forms of inadequate waste disposal. These problems threaten our environment and diminish the quality of air, land and water. This cannot be left unresolved.

Like most Indian reservations, local communities throughout the Navajo Nation dispose of their waste at these sites because no regulated facilities are in place. Under the current federal statutory criteria, not a single complying solid waste disposal landfill exists within the Navajo Nation. An initial inventory, conducted by the Navajo Nation, identifies that nearly 400 open dump sites exist. These open dumps sites are not only in violation of existing federal laws and regulations, but pose a tremendous threat to the health and welfare of Navajo people as well as the environment. The Navajo Nation is in the process of trying to remedy this situation, but suffers from a lack of resources to ensure that adequate disposal facilities are in place for people to use before all open dumps are closed and covered in accordance with federal regulations.

Many of these dump sites were built by federal government agencies to serve their facilities and often were not properly managed or maintained. The Bureau of Indian Affairs (BIA) built dump sites to accommodate the solid waste generated by their administrative operations and schools. These dump sites were also utilized by the Indian Health Service (IHS), Navajo communities and chapters.

When it comes to solid waste management, a major cost that the Navajo Nation has yet to address are those associated with the operation and maintenance of transfer stations or landfills. The local chapters, which are responsible for maintaining these transfer stations, are expected to absorb the operation and maintenance costs once a transfer station is constructed, which they are financially unable to do. At this time, the Navajo Nation is considering a user fee approach to meet the operation and maintenance costs, and we are seeking alternative solutions that will not impose an undue burden on the local communities, while still promoting proper disposal methods.

The Navajo Nation's Efforts to Address the Solid Waste Problem

The Navajo Nation has entered into a tri-party Memorandum of Understanding (MOU) with IHS and BIA. These entities agreed to develop a plan for the inventory of existing sites, the establishment of alternative solid waste disposal facilities, and the phasing in of close and cover operations. With the Navajo Nation in the final stages of fully completing its own inventory, the entities anticipate moving toward the establishment of alternative solid waste management systems, which must be implemented prior to the closing of currently utilized solid waste sites. If alternative methods for solid waste disposal are not installed, the Navajo Nation faces the possibility of an increased number of illegal dump sites. Given this, the Navajo Nation is concentrating its energy and limited resources on the development and construction of transfer stations and other alternative waste management systems so that proper close and cover operations can begin.

In the long-term, the Navajo Nation is considering the construction of three regional landfills. Because of the new groundwater monitoring requirements for very small landfill facilities, the Navajo Nation will have to reassess solid waste management alternatives. However, it takes funding and time to establish a regulatory program, acquire land to site the regional landfill, coordinate design and engineering, establish an operation and maintenance entity, and obtain financing and insurance. Despite all our efforts, we need further federal assistance to help us address our tremendous task.

The Navajo Nation Comments on S. 720, the Indian Lands Open Dump Clean-Up Act

The Navajo Nation supports the concept of S. 720 to provide technical and federal support to Indian tribes to clean up open dumps on Indian lands. The Navajo Nation offers the following comments on the specific provisions of the bill.

Sec. 3. Definitions

The Navajo Nation supports the definition of "Indian land" within S. 720 which is commensurate with "Indian country" as defined at 18 U.S.C. §1151. The Navajo Nation hopes that Congress will consistently use the Indian country definition in other environmental statutes dealing with the authority of Indian tribes.

Sec. 4. Authority of the Director of the Indian Health Service

Section 4(a) authorizes the Director to conduct an inventory at the request of an Indian tribe. The Navajo Nation is in the process of finalizing our own inventory; however, we understand that many Indian tribes do not have established solid waste

management programs or resources to conduct a similar inventory. Therefore, we support the intent of the bill to assist those Indian tribes who have yet to conduct an inventory.

Section 4(b) authorizes technical and financial assistance to Indian tribes upon completion of an inventory for closure and post-closure maintenance. As mentioned before, the Navajo Nation is finalizing its own inventory and is ready to begin closure and post closure activities. Should S. 720 be enacted, the Navajo Nation can begin to move toward closure procedures pursuant to this section.

Sec. 5(b). Demonstration Projects

During the Senate consideration of S. 720, the SCIA recommended the Navajo Nation, the Makah Tribe, and the Red Lake Band of Chippewa to participate as demonstration sites to identify the unique cost factors associated with closure and post-closure maintenance of open dumps on Indian lands. We appreciate this recommendation and strongly believe that our participation will enhance our current efforts in addressing our solid waste planning needs. The Navajo Nation urges this Subcommittee to approve similar language that will direct IHS to designate the same three tribes as participants under this section.

The Navajo Nation is an ideal candidate because we have achieved significant progress in our inventory assessments. We are ready to begin close and cover procedures. Our work with IHS, BIA, and local county governments, through cooperative agreements, indicates a strong commitment to the development of a feasible solid waste management plan that involves all responsible agencies. This commitment is further indicated by our willingness to seek other resources that might be available to solve our solid waste problems. The additional funding would help the Navajo Nation close and cover the major dump sites, thus easing the burden of closing and covering of all remaining sites. By participating as a demonstration site, the Navajo Nation anticipates that our effort will be an effective model for other Indian communities to effectively plan for the closure of open dump sites overall.

Sec. 6. Authorization of Appropriations

The Senate report language for S. 720 identifies an estimated appropriation of \$2 million in FY95, increasing to an estimated \$18 million in FY99 to implement the provisions of this Act. While this funding will certainly go far to assist tribes with open dump closure, the Navajo Nation still faces the large responsibility of operation and maintenance costs once alternative facilities have been constructed.

Although S. 720 does not include any funding mechanisms for operation and maintenance costs, we hope that future legislative efforts will consider this anticipated need. We also hope that the demonstration process will identify solutions and/or

resources to help the Navajo Nation meet the costs of maintaining future solid waste facilities.

Conclusion

The Navajo Nation appreciates the opportunity to comment on S. 720 and Congress' consideration of the Navajo Nation as a participant in the demonstration project. A demonstration model is only the beginning, and does not begin to address the larger issues of closing and covering all open dump sites existing on the Navajo reservation and maintaining new facilities. However, we need to emphasize time is running out for Congress to move this bill forward; therefore, the Navajo Nation urges this Subcommittee to move S. 720 quickly and pass the legislation so that Indian tribes may have this incentive to advance their solid waste planning. The Navajo Nation is committed to providing adequate solid waste services for the Navajo people, but cannot without the proper resources. We have a responsibility for the welfare and protection of our lands and our people - no responsibility could be more important.

Mr. RICHARDSON. Mr. Tony Smith, welcome. Once again, thank you for your work over the years with our subcommittee on a variety of issues.

STATEMENT OF TONY SMITH, ESQ.

Mr. SMITH. Thank you very much, Mr. Chairman, and I would like to congratulate you and the members of your subcommittee who have done a great job over the years for the Native people of the United States and Alaska.

As a lawyer and a politician, sometimes people always will look at us on the negative side of the equation, and it is nice to be able to work in a way where instead of having to keep coming up with reasons for not doing things you can help people in fact better their lives and show them the way to do things.

I have done that, Mr. Chairman, and that is one of the reasons why I am here today. I hope, in part, I was a catalyst for getting the Alaska Native Village Corporations back into the bill.

We have got a problem on the Pribilof Island, Mr. Chairman, because the government ran those two islands, which are 800 miles out in the Bering Sea, from the Aleutian Chain, ran those islands as a Federal reservation for fur seals, birds and the Aleuts.

In 1983, the government phased out the fur seal operations and transferred the lands, through the Fur Seal Act Amendments of 1983 to the Aleut natives. Unfortunately, the government operated the islands and created a number of dump sites, landfills.

There are two open dumps. There are two boneyards for vehicles on St. Paul and St. George, and there are 60 other dump sites on the island that do not meet standards.

We presently have an interagency task force that includes the Department of Commerce, it includes BIA, Indian Health Service, the State of Alaska, the Corps of Engineers, and EPA. And one of the problems we have is that unless this bill is amended to include under the jurisdiction those entities that were transferred lands under the Fur Seal Act Amendments we have gaps in authority, and we would like to have the opportunity to work with the staff to make sure that those gaps in authority don't create a problem for the effort of everyone, the Natives on the islands, and the State and Federal Government to clean up these sites.

I would like to also point out, Mr. Chairman, that we have another gap in authority that has to do with Indian preference. If this bill is not applicable to my clients, the Aleuts on the Pribilofs, under the present NOAA Council's interpretation of applicable law, we see the anomaly of people being brought out into the middle of the Bering Sea from outside of Alaska to do the cleanup work while the Aleut Natives stand by and watch the government's money spent on the standard competitive bidding system that the Corps of Engineers applies in Superfund sites and all major sites around the country.

That isn't, I believe, the intent—wasn't the intent of Congress with the Fur Seal Act Amendments or the Alaska Native Claims Settlement Act, nor is it the intent of Congress with this bill, and we need to clarify and correct that problem in the statute, and we would like to work with the staff on that matter, too.

Lastly, in terms of resources, because of the interagency effort we do have some money that will be included in the Department of Commerce NOAA budget for a portion of the closure and cleanup, and we need to be part of this bill so that we can have a demonstration project in the Indian Health Service and the BIA can do their part to solve the problem when we are in a position to completely solve the problem.

If my clients aren't included in S. 720, we will be in that anomalous position where you have got some money over here that if you could only combine it with some money from a different agency or department you would solve the problem, but the problem remains unsolved.

Appreciate your attention. Appreciate your concern with this important problem, Mr. Chairman. It is a pleasure being here.

Mr. RICHARDSON. Mr. Smith, thank you very much.

[Prepared statement of Mr. Smith follows:]

Testimony of Tony Smith

**Attorney For the Aleut Natives On The Pribilof Islands
Before the Subcommittee On Native American Affairs
S. 720 an Act "To Clean Up Open Dumps on Indian Lands"
The House of Representatives
Committee on Natural Resources**

July 26, 1994

My name is Tony Smith and I am an attorney in Anchorage, Alaska. I appear on behalf of the Aleut Natives on the Pribilof Islands in Alaska. The Pribilofs are often called the Galapagos of the North and are known for their abundant wildlife, marine mammals (particularly the North Pacific Fur Seal), birds and flora. The Pribilof Islands are inhabited by approximately 750 Aleut Natives and the population of both islands is approximately 99% Alaska Natives. The Aleut Natives are one of the indigenous groups in Alaska that inhabit the Aleutian Islands and the Pribilof Islands. St. Paul and St. George Islands comprise the largest indigenous Aleut communities in the world.

For purposes of this hearing I represent the Aleut community of St. Paul Island, the Aleut community of St. George Island, the City of St. Paul Island, the City of St. George Island, the Tanadgusix Corporation and the St. George Tanaq Corporation. These are all the Aleut entities which received title to lands previously part of the United States

Government Reservation on the Pribilofs as a result of the Fur Seal Act Amendments of 1983, 16 U.S.C. § 1151 et seq.

Background

Historically the Aleut Natives lived on the Aleutian Islands that comprise the Aleutian Chain in Alaska. The Pribilof Islands were uninhabited islands and were one of the only breeding grounds for the North Pacific Fur Seal and a major bird and wildlife rookery area. The Aleuts would travel from their villages along the Aleutians to the Pribilofs in order to harvest wildlife, birds and the North Pacific Fur Seal.

When the Russians discovered Alaska, they moved a group of Aleut Natives to the Pribilof Islands on a permanent basis to harvest the North Pacific Fur Seal. The North Pacific Fur Seal's pelt has been a very valuable commodity in the world fur markets for generations.

At the time of the Treaty of Cession in 1867, the United States Government contracted with private companies to take over the operation of the Pribilof Island Fur Seal harvest. The United States Government continued to keep the Aleut Natives on St. Paul and St. George Islands to carry out the harvest. In 1911, the Interim Convention for the Protection of the North Pacific Fur Seals was ratified in order to stop the over harvesting of the North Pacific Fur Seal. Under the

Convention, the Pribilofs were operated by the United States Government as a reservation for the benefit of the North Pacific Fur Seal, other wildlife and the Aleut people. The United States government maintained the Aleuts on the island as a captive labor force.

In the following decades the United States Government operated the Pribilof Islands as a United States Government plantation. The Aleuts were kept in virtual slavery in order to assist the United States Government in carrying out its operations. This history has been documented in a book called "Slaves Of The Harvest & A Century of Servitude" by Dorothy Jones. It wasn't until 1966, when Congress held hearings and was astounded by the actions of the United States Government, that the condition of the Aleuts was improved. In 1966, the Aleuts on the Pribilofs were finally granted basic rights guaranteed to other American citizens by the Constitution, and to American Natives by Treaties and The Indian Reorganization Act. The Government, however, continued to carry out the Fur Seal harvest program and the Aleuts continued to be the captive labor force for its operation.

In the 1980's pressure from various groups resulted in the United States Government phasing out the North Pacific Fur Seal harvest and conveying the land on St. George and St. Paul Islands to the Aleut Natives. The Government's conveyance of property, and the Government's effort to create an economy not

dependent on sealing, was implemented through the Fur Seal Act Amendments of 1983, 16 U.S.C. § 1115 et seq.

Pursuant to the Fur Seal Act Amendments, the Government and the Natives entered into a "Transfer of Property Agreement" and there was the establishment of the St. Paul and St. George Island Trusts. While the Trusts were successful, the original 10 year term has expired this year. The "Transfer of Property Agreement" has only been implemented in certain instances.

For purposes of S. 720, the important fact is that the United States Government, in carrying out its activities on both islands, created open dumps on these lands which affected the health and safety of the residents and the use of Indian lands on the islands. At the time of the phase out the Aleuts asked the federal government to bring all the facilities and dump sites into compliance with applicable laws. More than 60 dump sites exist on the two islands. There are two open landfills and two vehicle dump yards that require immediate closure and remediation. At the time these dumps were established and used by the National Marine Fishery Service they did not meet standards presently applicable. In certain instances the open dumps threatened the health, safety and welfare on the islands.

My clients ask that S. 720 be amended in three respects. One we believe that the lands and entities which were the subject matter of the Fur Seal Act Amendments of 1983, 16 U.S.C. § 115 et seq., be included as the term "Indian Land" is defined in section 3(3) of the Act; and be included as an "Indian Tribal Government" defined in section 3(4) of the Act.

These two amendments would allow the Aleut Natives of St. Paul and St. George Island to be treated equally with other native people who face the costs and environmental threats to their health and safety because of the actions of the United States Government in Indian country.

While the Pribilofs are a unique situation, they are analogous to reservations in the Lower 48. Both islands were reservations, were operated for the benefit of the United States Government, that operation included the creation and use of open dump sites, and the Aleut people on the islands are now being required to pay for cleaning up and closing these dump sites pursuant to the more stringent laws applicable to today's situation.

My clients additionally ask that this Subcommittee amend S. 720 to clarify the legislative authority for the National Oceanic and Atmospheric Administration (NOAA) to carry out cleanup activities on the Pribilofs. NOAA has raised questions about its authority to contract for cleanup of

debris, dump sites, contaminates, and hazardous facilities and conditions which were left on the Pribilofs by NOAA. In addition, NOAA requires competitive bidding pursuant to general laws and has taken the position that they cannot allow noncompetitive or reimbursable contracts by the Aleut people who live on the island. We thus find a situation where the Aleut Natives watch people brought in from other communities carry out the cleanup work which the Aleut residents are capable of doing. Through the Fur Seal Act Amendments, Congress intended that the Aleuts be the beneficiaries of economic opportunities on the islands, but that intent needs to be clarified in this situation.

My clients believe that the amendments we request are consistent with the intent of S. 720 and will ensure that the Aleut Natives on the Pribilofs receive the same treatment as Indian Tribal Governments and Reservations in Indian country.

Thank you very much for your consideration and we will submit to the Committee's staff proposed statutory language and hope you will favorably consider the situation on the Pribilofs.

Mr. RICHARDSON. Mr. Bowechop?

STATEMENT OF G. CHAD BOWECHOP

Mr. BOWECHOP. Thank you.

I would like to read some of the prepared text.

Mr. Chairman and distinguished committee members I would like to thank you for the opportunity to be here today and provide testimony on S. 720 on behalf of the Makah Tribal Council. My name is Chad Bowechop. I am a Makah tribal member and have resided on the Makah Indian Reservation most of my life.

The Makah Tribal Council has identified the closure of the tribal open dump site as the number one environmental priority. In addressing this issue the Makah Tribe recognizes the problem as twofold. First, identifying funding and technical assistance to close our existing open dump; and, second, development and implementation of solutions to handle the present and future waste stream.

Approximately 2 years ago the Makah Tribal Council was advised that continued operation of the open dump on the Makah Indian Reservation would not be permitted after October of 1993 without complying with the requirements of Subtitle D of the Resource Recovery and Conservation Act. This date was then extended to April of 1994.

The Makah Tribal Council has taken a series of actions to deal with this problem, including contacting the Indian Health Service, the Bureau of Indian Affairs, and the Environmental Protection Agency.

We first contacted the Indian Health Service requesting financial and technical assistance to address our solid waste issue. Our request was denied. Although acknowledged by the Indian Health Service that a solid waste problem did exist, it did not meet their funding priority criteria. The Indian Health Service funding criteria addresses safe drinking water and sewerage treatment projects ahead of solid waste.

Having experienced no success in identifying a funding source from Indian Health to address our tribe's open dump closure issue, we contacted the BIA to assist in funding our open dump closure issue. At the same time we approached EPA for funding and they have provided a portion of the funds necessary to conduct an engineering study to fully develop our closure plan.

The EPA Solid Waste Coordinator in Region X suggested we apply to the Solid Waste Network for technical assistance. The Solid Waste Network is a cooperative entity between four Federal agencies—the Indian Health, the Environmental Protection Agency, the Bureau of Indian Affairs, and Housing and Urban Development.

The premise of this cooperative effort of the Solid Waste Network is to assist tribes in developing a tribally specific solid waste management plan by incorporating the various agencies' services and technical expertise.

The Solid Waste Network is coordinated by EPA and as employed has allowed the Makah Tribe to develop a model work plan for design specifications for closure of our dump site along with development of a near complete integrated solid waste management plan.

At this point in time the Makah Tribe is in the process of negotiating a contract with a Seattle-based engineering firm to address an engineering survey, a geotechnical investigation and a waste consolidation design through funds secured by the BIA and the EPA.

The total cost for a complete study will require the tribe to identify approximately \$200,000 in additional funding, depending on the outcome of toxic waste and geotechnical studies. Once the engineering study is complete, the closure plan for an open dump can be finalized.

One interesting fact is that many Federal entities have used this open dump, including Indian Health, U.S. Fish and Wildlife, the FAA, the U.S. Coast Guard, the U.S. Air Force, the Bureau of Indian Affairs. Only the BIA, after our Tribal Council aggressively sought assistance, has offered any help in closing this facility.

A preliminary engineering study has placed the cost of closure of our open dump at a minimum of \$2 million and possibly as much as \$4 million. We simply don't have the funds to close our open dump.

The principal economic activities on our reservation have been fishing and forestry for the past 50 years. In the past 4 years, our fishing income has dropped by 75 percent, our forestry income by 50 percent. Now, we are faced with landfill closures of several million dollars which we simply cannot afford.

Even more significant, dealing with a solid waste stream in the future may cost substantially more than present disposal methods. We have explored nearly every known solid waste disposal method to deal with our solid waste stream.

We are developing an integrated solid waste disposal plan which will include as many of the following components as possible: source reduction, material reutilization, recycling, and incineration and landfill. However, our geographic isolation is extreme. The nearest permitted landfill is 75 miles east of our reservation in Port Angeles, Washington, and is due to close within 5 years. Tipping fees are \$62 per ton and could easily increase to \$80 within 2 or 3 years.

Once the permitted landfill in Port Angeles closes, the nearest permitted landfill to take our waste will be in eastern Washington, approximately 300 miles from our reservation. Our total disposal cost will increase from approximately \$100,000 today to nearly \$200,000 next year.

Once the Port Angeles permitted landfill closes within 5 years the costs will likely go over \$300,000 or \$58 per household. We sincerely hope our integrated solid waste management plan will reduce our waste stream substantially, reduce the costs, since neither our tribal government nor individual members can afford to pay disposal costs of this magnitude. We fear illegal dumping will occur on a large scale if these costs reach the level indicated by our studies.

Assistance from Indian Health for costs incurred by the tribe and tribal members as necessary to meet the Federal Government's trust responsibility. Indian communities nationwide in isolated locations will be facing similar cost increases at a time when eco-

conomic conditions for many tribes is the least favorable in many years.

The Makah Tribal Council recognizes the need for the Indian Health Service to be provided the authority and resources to respond to requests from tribal governments for assistance in conducting inventories and assessments of open dump sites as well as the procedural developments of closure and post-closure maintenance plans.

Additional funding is critical to allow tribal governments the ability to adhere to RCRA subtitle D requirements and to respond to the findings of the *Blue Legs v. EPA*.

In view of RCRA subtitle D requirements and the tremendous financial burden the requirements place on tribes, the Makah Tribal Council has concerns in regards for our tribe's inability to obtain treatment as State status. Treatment of State status of RCRA programs would allow tribes primary enforcement responsibilities of solid waste programs and projects, thereby allowing tribes to receive direct funding allocations.

It is our observation unless tribes are able to address congressional environmental mandates through tribal environmental capacity building efforts, long-term solutions will not be realized and Federal trust responsibility will only be partially served.

The Makah Tribal Council further recognizes the critical need this bill addresses in view of the presently implemented RCRA landfill closure schedule. We would suggest increased funding levels in the Congressional Budget Office cost estimates in 1995 and 1996, and acceleration of the closure appropriation schedule.

We would also suggest language for a specific appropriation and a specific amount to be authorized and inserted in this bill.

The Makah Tribal Council would like to thank the subcommittee for holding this hearing on S. 720. The Makah Tribal Council also recognizes S. 720 as an initial critical step towards solving tribal environmental waste issues and supports passage of the bill.

Thank you.

Mr. RICHARDSON. Thank you very much.

[Prepared statement of Mr. Bowechop follows:]

**TESTIMONY OF THE MAKAH TRIBAL COUNCIL BEFORE THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL
RESOURCES, SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS.
TESTIMONY GIVEN BY G. CHAD BOWECHOP,
ENVIRONMENTAL PLANNER**

INTRODUCTION

Mr. Chairman and distinguished committee members. I would like to thank you for the opportunity to be here today to provide testimony on the S.720 bill on behalf of the Makah Tribal Council. My name is Chad Bowechop and I am a Makah Tribal Member and have resided on the Makah Indian Reservation most of my life. The Makah Tribal Council has identified the closure of the Tribal open dump site as the number one environmental priority. In addressing this issue, the Makah Tribe recognizes the problem as a two fold process. First, identifying funding and technical assistance to close our existing open dump and second, development and implementation of solutions to handle the present and future waste stream.

BACKGROUND

Approximately two years ago, the Makah Tribal Council was advised that continued operation of the open dump on the Makah Indian Reservation would not be permitted after October of 1993 without complying with the requirements of Subtitle D of the Resource Recovery and Conservation Act (RCRA). This date was then extended

to April of 1994. The Makah Tribal Council has taken a series of actions to deal with this problem including contacting the Indian Health Service, the Bureau of Indian Affairs and the Environmental Protection Agency. We first contacted the Indian Health Service requesting financial and technical assistance to address our solid waste issue. Our request was denied. Although acknowledged by the Indian Health Service that a solid waste problem did exist, it did not meet their funding priority criteria. The IHS funding criteria address safe drinking water and sewer treatment projects ahead of solid waste issues.

Having experienced no success in identifying a funding source from IHS to address our Tribe's open dump closure issue, we contacted the BIA to assist in funding our open dump closure issue. At the same time we approached EPA for funding and they have provided a portion of the funds necessary to conduct an Engineering Study to fully develop our closure plan. The EPA Solid Waste Coordinator in Region X suggested we apply to the Solid Waste Network for technical assistance. The Solid Waste Network is a cooperative effort between four federal agencies: Indian Health Service, Environmental Protection Agency, Bureau of Indian Affairs and Housing and Urban Development. The premise of this cooperative effort of the Solid Waste Network is to assist tribes in developing a tribally specific solid waste management plan by incorporating the various agency services and technical expertise. The Solid Waste Network is coordinated by EPA and has allowed the Makah Tribe to develop the Model Work Plan for design plans and specification for closure of our dump site along with development of a near complete integrated solid waste management plan.

At this point in time, the Makah Tribe is in the process of negotiating a contract with a Seattle based engineering firm to address an engineering survey, a geotechnical investigation and a waste consolidation design through funds secured from the BIA and EPA. The total cost for a complete study will require the Tribe to identify approximately \$200,000 in additional funding depending on the outcome of toxic waste and geotechnical studies.

Once the engineering study is completed, the closure plan for our open dump can be finalized. One interesting fact is that many Federal entities have used this open dump including: IHS, U.S. Fish and Wildlife Service, F.A.A., U.S. Coast Guard, U.S. Air Force, and Bureau of Indian Affairs. Only the BIA, after our Tribal Council aggressively sought assistance, has offered any help in closing this facility. A preliminary engineering study has placed the cost of closure of our open dump at a minimum of \$2 million and possibly as much as \$4 million. We simply do not have funds to closing the open dump. The principal economic activities on our reservation have been fishing and forestry for the past 50 years. In the past 4 years our fishing income has dropped by 75% and forestry income by 50% in the past two years. Now we are faced with landfill closure costs of several million dollars which we cannot fund from tribal resources..

Even more significant, dealing with solid waste stream in the future may cost substantially more than present disposal methods. We have explored nearly every known solid waste disposal method to deal with our solid waste stream. We are developing an integrated solid waste disposal plan which will include as many of the following components as possible: source reduction, material reutilization, recycling,

incineration and landfill. However, our geographic isolation is extreme. The nearest permitted landfill is 75 miles east of our reservation in Port Angeles and is due to close within 5 years. Tipping fees are \$62 per ton and could easily increase to \$80 within two or three years. Once the permitted landfill in Port Angeles closes, the nearest permitted landfill to take our waste will be in Eastern Washington, approximately 300 miles from our reservation. Our total disposal costs will increase from about \$100,000 today to about \$190,000 next year. Once the Port Angeles permitted landfill closes within 5 years, this cost will likely go to over \$300,000 or \$58 per month per household. We sincerely hope our integrated solid waste management plan will reduce our waste stream substantially and reduce these costs, since neither our Tribal Government nor individual members can afford to pay disposal costs of this magnitude. We fear illegal dumping will occur on a large scale if these costs reach the levels indicated by our studies. Assistance from IHS for costs incurred by Tribes and Tribal Members is necessary to meet the Federal Government's Trust Responsibility. Indian communities nationwide in isolated locations will be facing similar cost increases at a time when economic conditions for many Tribes is the least favorable in many years.

The Makah Tribal Council recognizes the need for the Indian Health Service to be provided the authority and resources to respond to requests from Tribal governments for assistance in conducting inventories and assessments of open dump sites as well as the procedural development of closure and post closure maintenance plans. Additional funding is critical to allow Tribal governments the ability to adhere to the RCRA Subtitle "D" requirements and respond to the findings of the BLUE LEGS vs. EPA 867 F. 2d 1094 (8th Cir. 1989) case.

In view of RCRA Subtitle D requirements and the tremendous financial burden the requirements place on tribes, the Makah Tribal Council has concerns in regards to our Tribe's inability to obtain treatment as state (TAS) status. TAS status of RCRA programs, would allow tribes' primary enforcement responsibilities for solid waste programs and projects, thereby, allowing tribes to receive direct funding allocations. It is our observation that unless tribes are able to address congressional environmental mandates through Tribal environmental capacity building efforts, long term solutions will not be realized and federal trust responsibility will only be partially served. The Makah Tribal Council further recognizes the critical need this bill addresses. In view of the presently implemented RCRA landfill closure schedule, we would suggest increased funding levels in the Congressional Budget Office Cost Estimate in 1995 & 1996 and acceleration of the closure appropriation schedule. We would also suggest language for a specific appropriation and a specific amount to be authorized and inserted in this bill.

CONCLUSION

The Makah Tribal Council would like to thank the subcommittee for holding this hearing on S.720. The Makah Tribal Council also recognizes S. 720 as a initial , but critical step towards solving tribal environmental solid waste issues and support the passage of the bill with suggested amendments.

Mr. RICHARDSON. Mr. Winder, you mentioned in your testimony that only 38 percent of the tribes responding to your survey exercise regulatory authority over solid waste. How many tribes have developed their own comprehensive solid waste management plans for their reservations?

Mr. WINDER. Unfortunately, that is a number that I have no idea as to how many tribes have developed comprehensive solid waste management plans, so it would just be a guess.

Mr. RICHARDSON. What would be your guess?

Mr. WINDER. My guess would probably be, and it is really a guesstimate, there can't be more than 30 or so tribes throughout the country that have developed—

Mr. RICHARDSON. That have a plan?

Mr. WINDER. That have plans in place.

Mr. RICHARDSON. Now, Chairman Whitefeather, how many of the dumps located on your reservation were Federally constructed or have had waste from Federal agencies disposed in them?

Mr. WHITEFEATHER. Our understanding is that the current landfills—well, what we call landfills are open dump sites—were sited by the Indian Health Service back 30 or 40 years ago. That is our understanding.

Mr. RICHARDSON. What is the estimated total cost to close the three municipal landfills that are located on your reservation?

Mr. WHITEFEATHER. Our initial estimate is in the area of \$435,000, Mr. Chairman.

Mr. RICHARDSON. And what is your timetable for their closure?

Mr. WHITEFEATHER. I believe the lady next to me here said that October 1995 is the newly extended deadline for the closure of unapproved landfills.

Mr. RICHARDSON. Regarding the post-closure maintenance for these facilities, there would have to be some fund for that, right?

Mr. WHITEFEATHER. Well, yes. That is one of the things that we are hoping for, to obtain some funding for whether it be through Indian Health Service with the help of this subcommittee or through some funding from the Environmental Protection Agency to do the post-closure.

Mr. RICHARDSON. Ms. Hoskie, you do support the initiative of a 10-year plan to address solid waste management plans of tribes? Do you support that we put that in the new bill?

Ms. HOSKIE. The 10-year plan?

Mr. RICHARDSON. Yes. To set up a 10-year plan for tribes to develop solid waste management plans.

Ms. HOSKIE. Yes, I do.

Mr. RICHARDSON. You have one, don't you?

Ms. HOSKIE. Yes.

Mr. RICHARDSON. Does the Navajo Nation?

Ms. HOSKIE. Yes. We have our own solid waste management plan.

Mr. RICHARDSON. Would you tell us a little bit about it? How would you do it? Is there a timetable? Are there any unique circumstances that you would like to share with everyone since you have been doing it? What are the bigger problems?

Ms. HOSKIE. Sure. Our plan focuses on the placement of transfer stations, which are temporary storage facilities that are con-

structed in each of the 110 local governing units called chapters on the Navajo Nation.

To date, we have constructed 22 of these transfer stations and have located them strategically where multi-chapters or a consortium of chapters can use them. But the idea long term is to have one at each chapter, and certainly one where there is a major population center like in Shiprock, New Mexico, Crown Point, New Mexico, and so on.

The other plan that we have is to build two or three regional landfills that comply with RCRA subtitle D. Currently the 22 transfer stations that I mentioned are hauling, are transporting the solid waste off the reservation to certified landfills.

We are also placing bins in the remote chapters that are not easily accessible, like Navajo Mountain up near Page, some of the other smaller chapters can also get by with bins that are placed by private contractors and then they are picked up on a weekly or a monthly basis. That seems to be working as an interim measure.

So, in those locations we are planning to close the open dumps. The long-term goal is to develop a landfill, like I said, two or three landfills. The design and feasibility studies for those are very costly, and we are probably about one year away from developing the first landfill in Tuba City.

Mr. RICHARDSON. When you talk about the situation in Alaska, do we know what kind of waste was disposed at these facilities? Is it mainly hazardous waste or what kind is it?

Mr. YOUNG. Mr. Chairman, on the Pribilofs we have been able to do an assessment and it is not mostly hazardous. It is the same kind of waste that you would find on any other reservation as a result of the government operating those two islands.

Hazardous waste presents an entirely different situation where you get into Superfund and all the rest of those things.

Mr. RICHARDSON. Now, the same question I asked Chairman Whitefeather. How many of the landfills were Federally constructed?

Mr. SMITH. They all were, Mr. Chairman. They were all part of the operation of the Pribilofs for sealing.

Mr. RICHARDSON. Is it Federal waste?

Mr. SMITH. It is Federal waste. It was put there by the Federal Government. In 1983 when the government decided to phase out sealing, they transferred the lands to the tribal entities and the other entities on the island, and to the Aleut people, and with that went the burden of these open dump sites and others that violate the present rules.

Mr. RICHARDSON. Now, in dealing with the Alaska issue, their inclusion, if we just say ANCSA lands, is that sufficient or is there a more inclusive term?

Mr. SMITH. We need to also have S. 720 applicable to the entities under the Fur Seal Amendments of 1983 because it was a separate situation, and the ANCSA language, while helpful, doesn't get there. You still have gaps in authority.

Mr. RICHARDSON. Well, I think you need to work with us, and Mr. Young to make sure we have an all-inclusive term, and we will defer to you on that. I just want to make sure that there is no loop-hole where they are not included.

Mr. Bowechop, you talked about the Solid Waste Network—this is the IHS, BIA, HUD—that is being tried out in some regions of the country. Is it only done in the Northwest or is it a national plan?

Mr. BOWECHOP. To my knowledge, I believe it is regions VIII, IX and X, although I am not clear on that. I know in Region X we have done well with it.

Mr. RICHARDSON. Have they helped you?

Mr. BOWECHOP. They have helped us to a large degree. Without the cooperative efforts from the network, we wouldn't be as far along in our effort towards developing a solid waste management plan.

Mr. RICHARDSON. So they have been helpful then?

Mr. BOWECHOP. Absolutely, yes.

Mr. RICHARDSON. Have they given you any financial assistance?

Mr. BOWECHOP. Yes. The Environmental Protection Agency and the BIA have both funded us.

Mr. RICHARDSON. Now, regarding the legislation on the demonstration projects, would you be able to benefit from that? Would the Makah Indian Tribe be eligible under the criteria that we have set forth?

Mr. BOWECHOP. Yes. We would benefit greatly from it, although we do have concerns that in view of the RCRA regulations that the timetable should be accelerated.

Mr. RICHARDSON. Well, you should also follow and work with us on the Superfund legislation. I have language in the Superfund bill in committee that is inclusive of tribes under these Superfund programs. We need to expand that language as we move the bill to the floor, if we do this year.

The staff is working on that. Counsel over here is working on a comprehensive Indian amendment, and what we want to do is make sure, again, that these programs are inclusive, that tribes are eligible, that they can participate, they can receive some of the resources and technical expertise from EPA.

I want to thank you, all of you. We have the Prime Minister of Israel and the King of Jordan on the House floor shortly and all members are required to attend.

So this has been a very useful hearing. I want to thank all of you. Again, as we make the necessary charges to this bill, we need to work with you, so please stay in touch with us and Mr. Young. We look forward to seeing you again soon.

This hearing is adjourned.

[Whereupon, at 10:42 a.m., the subcommittee was adjourned.]

APPENDIX

JULY 26, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

COMMENTS OF THE
CITY OF ST. GEORGE, ALASKA
ON S. 720, BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
JULY 26, 1994

The City of St. George, Alaska, the municipal government on St. George Island, one of the Pribilof Islands, in the central Bering Sea. We are pleased to submit for the record our comments on S. 720 and, through our Washington Counsel William W. Garner, hereby offer to assist you in enactment of amendments which will address one of the most serious environmental cleanup issues facing Native Americans and the wildlife resources of a Federal reservation.

From a Native American health and a wildlife conservation perspective, environmental contamination of the Pribilof Islands is a serious national concern. St. George is the smaller of the two islands geographically, having as well a smaller resident population of roughly 150, all Aleuts Natives. The bird cliffs on the Pribilof Islands of St. George and St. Paul are world class, and are managed by the U. S. Fish and Wildlife Service as a unit of the Alaska Maritime National Wildlife Refuge. Similarly spectacular in the size of their concentrations, the Northern fur seal rookeries on these two islands are reserved from the public domain for management by NOAA. We don't know of any location where Native Americans and wildlife are more threatened by Government caused environmental contamination than on the Pribilof Islands.

The National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, has undertaken a limited, multiyear cleanup of the Pribilof Islands, after phaseout of 120 years of Federally sponsored commercial fur sealing. The commercial fur sealing program began to wind down in 1983, pursuant to the Fur Seal Act Amendments of 1983 (FSAA), leaving every manner of debris, sanitary landfills, dumpsites, contaminants, and hazardous facilities and conditions one can imagine would be produced by a company town conducting animal processing and management operations.

Land on St. George Island where NOAA recently found (25) sites contaminated

Comments of City of St. George, Alaska, on S. 720, H. Subcomm. on Native
American Affairs, July 26, 1994

by solid wastes, contaminants, and debris, have been conveyed to the Island-based Native, Tribal, and municipal corporations mostly pursuant to the Transfer of Property Agreement (TOPA), incorporated into the Fur Seal Act. None was conveyed with any assurance by NOAA it would clean up its 120 years of mess, and the liabilities NOAA conveyed to these corporations are now presenting costly bills.

We are in a different position than St. Paul. NOAA is now stirring itself and is funded to undertake considerable cleanup work on the Pribilof Islands in FY 1995, but is leaving St. George behind and has no present plan for significant expenditures on St. George Island. Secondly, the public health hazard from present and former landfills or dumps on St. George is serious and needs to be taken care of immediately.

Passage of S. 720 presents the Congress with an opportunity to extend the public policies of the bill to a limited class of lands in Alaska, although some funding of cleanup of solid waste landfills and dumpsites on former federal lands is being provided to an agency other than IHS. The environmental and human implications for Native Americans of dumpsites and sanitary landfills are as or more serious than for any Reservation. Over 120 years of U.S. profiteering in the fur trades, these were Federal "factory towns" using impressed labor of Native Americans [so undemocratically that the Aleut Natives of the Pribilof Islands won in the Court of Claims the only award ever levied against the Government under the "fair and honorable dealings" clause of the Indian Claims Commission Act]. Consequently, the Federal contribution to and responsibility for these wastes and debris on the Pribilof Islands is possibly greater than for many dumpsites on lower '48 Indian Reservations, and the nature of the environmental contamination is more characteristic of industrial than human use.

There is also presented by S. 720 an opportunity to direct and facilitate a more complete environmental restoration of the Pribilofs than NOAA thus far has been willing to assume responsibility for. The ability of the entities on St. George to underwrite coordination with NOAA, EPA, and the Alaska Department of Environmental Conservation, much less to share the costs of cleanup thrust on us by NOAA, are virtually nonexistent. Second, there are a variety of authorities afforded other agencies to deal with these types of problems at facilities now or formerly under their jurisdiction, and there is every public policy justification that NOAA should be granted these authorities. Third, cost reimbursement and preference contracting procedures are called for. We would be most appreciative of an opportunity to discuss

with you possible amendments to S. 720 which clarify or extend to NOAA authorities afforded to other agencies which are intended to permit Federal agencies to reach contamination and hazards they pass to conveyancees of Federal facilities.

Thank you for this opportunity to present our views on S. 720.

**TESTIMONY OF DARWIN ST.CLAIR
CHAIRMAN, SHOSHONE BUSINESS COUNCIL
ON BEHALF OF THE SHOSHONE INDIAN TRIBE
WIND RIVER INDIAN RESERVATION**

BEFORE

**The Subcommittee on Native American Affairs,
of the Committee on Natural Resources,
United States House of Representatives**

**Hearing on S. 720
"Indian Lands Open Dump Cleanup Act of 1994"
Tuesday, July 26, 1994**

Chairman Richardson, members of the Subcommittee on Native American Affairs, my name is Darwin St.Clair. I am Chairman of the Shoshone Business Council. On behalf of the Shoshone Indian Tribe of the Wind River Indian Reservation, I am pleased to submit testimony on S. 720, the "Indian Lands Open Dump Cleanup Act of 1994." This bill is critical to restoring the integrity of the reservation environment and safeguarding the health and safety of reservation residents.

As you well know, the issue of open dumps on Indian lands has been a grave concern throughout Indian country for many years. That concern has become even more pronounced since 1989 when the United States Court of Appeals for the Eighth Circuit, in Blue Legs v. Bureau of Indian Affairs, 867 F.2d 1094 (8th Cir. 1989), affirmed a decision that Indian tribes may be held liable under the Resource Conservation and Recovery Act ("RCRA") for cleaning up open dumps on their reservations. This decision was reached despite the fact that tribes have never been eligible to assume primary responsibility for RCRA enforcement on their reservations or to benefit from the billions of federal dollars spent to support state environmental programs, including RCRA programs, over the last two decades. In the fallout of the Blue Legs decision, tribal governments now face enormous potential clean-up costs for hundreds of sites on reservations that might be considered open dumps under RCRA.

In 1990, one study estimated that there were 650 solid waste sites nationwide on Indian reservations. This number included 108 tribally-owned sites of which only two are in compliance with EPA guidelines. The study also indicated that the clean-up of the 106 non-compliant sites would cost about \$68 million. Select Committee on Indian Affairs' Workshop on Solid Waste Disposal on Indian Lands, 102d Cong., 2d Sess. 7 (Select Comm. Print 1991). Four years later, it is frustrating to realize that little has been done to improve this situation. Tribal governments still lack the financial and technical resources to tackle the problem independently, and Congress still has not given any of the relevant federal agencies charged with carrying out the trust duty to Indian tribes--

BIA, EPA, and IHS—clear directives and the money necessary to ensure immediate remediation of this situation. As a result, the Shoshone Indian Tribe strongly supports the intent and purposes of S. 720.

This bill would call for an identification of open dumps on Indian lands and assessment of the hazards of open dumps. As originally introduced in 1993, S. 720 would have required the Director of IHS to inventory and identify all open dumps on Indian lands. However, § 4(a) of S. 720 now calls for an inventory of only those open dumps on each reservation which are subject to tribal authority, and each tribe must trigger the inventory through a request. Tribal governments have repeatedly voiced their desire for federal assistance to address the solid waste crisis, yet again, the bill would ask them to jump through another hoop to obtain such help. Requiring each tribe to submit such a request for an inventory seems unnecessary when virtually every reservation will have some open dumps. This requirement surely will result in further delays because, while tribal requests would presumably be made to the Director of IHS, the bill fails to describe explicitly when, how, and to whom such requests would be made. Moreover, when a request is made, the bill fails to set a time limit on the completion of an inventory for a particular reservation. The bill also does not include any requirement regarding promulgation of regulations by the IHS governing this requirement. We therefore would urge this Subcommittee to give further thought to how the legislation would be implemented through the tribal request process.

Once an inventory is complete, § 4(a)(2) of the bill would require the Director to determine the severity of the public health threat posed by each dump. Such determination, however, would be based upon existing information available to the Director and tribe. Additional soil testing and water monitoring would be required only when the Director, in consultation with the tribal government, determined that additional testing was necessary. By limiting the use of common technological advances such as soil testing and water monitoring, it is highly questionable whether the Director could even make a reasonable determination that a dump did or did not pose a threat to human health. Accordingly, we ask that this limitation be removed.

The bill also would provide badly needed financial and technical assistance to tribal governments for the closure of open dumps in compliance with applicable federal laws or tribal standards. While recognizing tribal sovereign powers to regulate the reservation environment, including waste disposal, the bill would require that, if dumps are closed under tribal law, such standards must be more stringent than the federal standards. We recommend that this language be amended to reflect that tribes also may close dumps under tribal laws at least as stringent as the federal standards. Rather than holding Indian tribes to a higher regulatory expectation than that imposed on states, Congress instead should focus on providing tribes with a level environmental playing field. That position also would be consistent with current federal Indian policy supporting tribal self-determination.

Again, where the 1993 version would have required the closure of all open dumps identified on the national inventory by the Director of IHS, § 4 of S. 720 now provides that the Director provide financial and technical assistance to tribal governments. Tribes would be directly responsible for closing such dumps and providing postclosure maintenance. Such assistance, however, would be subject to priorities set for each reservation by the Director of IHS based on the severity of the threat to public health posed by "each open dump" and the availability of funds needed for closure and postclosure maintenance. Because tribes would be responsible for requesting an inventory and for closing and maintaining closed dumps, it seems only fair and consistent with the government-to-government relationship that tribes also be responsible or at least share the responsibility with the Director, for setting these reservation priorities.

Section 5(b) of the bill would authorize demonstration projects involving three Indian tribes. The purpose of these projects would be to determine if unique cost factors exist in the cleanup and maintenance of open dumps on Indian lands and the need for advance closure planning. Demonstration projects clearly may serve useful purposes; however, the stated purposes of determining cost and closure planning needs seem broad and unfocused. This is particularly so when the demonstration projects may be funded for only three years, yet post-closure maintenance may last ten times that period. The bill should be amended to clarify the purpose of the demonstration projects and to extend the duration of funding for the projects to cover more of the post-closure maintenance period.

The definition of "open dump" used in S. 720 is troubling. Although § 3(6) of S. 720 uses the definition of "solid waste" codified in RCRA, the bill employs a different definition of "open dump." S. 720 defines "open dump" as "any facility or site where solid waste is being or has been routinely and regularly disposed of that has not been closed or covered or that does not meet the criteria for a new municipal solid waste landfill unit promulgated pursuant to the Solid Waste Disposal Act." (Emphasis added). As a result, the bill nevertheless would classify an active solid waste facility or site that has not yet been closed, but which complies with the municipal solid waste landfill criteria as an "open dump." Adoption of the RCRA definition of "open dump" would remedy this flaw. The RCRA defines "open dump" merely as "any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste." 42 U.S.C. § 6903(14).

Finally, we have several concerns about the funding of the activities contemplated by S. 720. Section 6 of the bill now contains only a general authorization of "such sums as may be necessary to carry out this Act." Since 1990, we know that at least \$68 million is needed to address tribal solid waste disposal problems. Because no national inventory has ever been conducted, we cannot be sure that this figure is adequate or even in the ball park. Many in Indian country suspect this figure will fall far below the

actual mark. However, it seems clear that Congress must take strong steps to address this crisis, including a firm commitment to authorize a set amount of funds for these purposes.

Because the bill would place all responsibility for implementation in the hands of the Director of IHS, we also are concerned about the interplay between S. 720 and the Indian Health Care Improvement Act. Section 6 would limit funding of activities performed by the Director of IHS to appropriations under S. 720 and require that the Director coordinate these activities with other activities related to solid waste and sanitation funded under other authorizations. Presumably, this language refers to funding for tribal projects--drinking water and sanitation programs--under the Indian Health Care Improvement Act. However, we ask that this Subcommittee review the Indian Health Care Improvement Act to ensure that the Act includes solid waste issues. In addition, we ask this Subcommittee to analyze the Indian Health Care Improvement Act to ensure that it is capable of effective coordination with S. 720, particularly in the area of funding, without jeopardizing the implementation of other tribal water and sewer programs.

Finally, the bill simply must be amended to provide for a moratorium against tribal liability under the citizens' suit provision of RCRA. Tribes have been looking down the barrel of the citizens' suit gun for years, despite the fact that they never received any funding under RCRA for solid waste management and planning. Because of the federal government's neglect of solid waste issues on Indian lands, we are overrun with unauthorized dumps and even federally-constructed facilities that do not comply with the new RCRA landfill standards. Worse, we still have no safe and legal place to put our trash. It simply is not fair, especially when the BIA has found resources to close its dump. We propose that, once a particular site has been identified by the Director, the tribe be immune from citizens' suit liability. Then these sites can be cleaned up in due course under the provisions of S. 720.

In conclusion, a crisis exists in Indian country with respect to solid waste. While we have made a number of recommendations on specific provisions, we strongly support the enactment of this bill because it should make great strides in addressing this problem. Accordingly, the Shoshone Indian Tribe commends this Subcommittee for its continued work on this important piece of legislation. Should you need additional information from the Tribe, please do not hesitate to call on me. Thank you.

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July 28, 1994

The Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
Committee on Natural Resources
ATTN: Steven Heeley
U.S. House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Chairman:

As you may recall, our firm represents the Campo Band of Mission Indians, whose reservation is located in eastern San Diego County, California. Please accept this letter as formal comment and testimony on S. 720, the Indian Lands Open Dump Cleanup Act of 1994, to be included in the record of the Subcommittee on Native American Affairs hearing on July 26, 1994. While we wholeheartedly support legislation that will improve the environmental quality of Indian Country and result in the clean up of open dumps within Indian jurisdictions, we also believe that S. 720 appropriately could be used as a vehicle to clarify the status of Indian tribes under Subtitle D of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA").

Under RCRA, the United States Environmental Protection Agency ("EPA") has promulgated regulations for the management and operation of Municipal Solid Waste Landfills ("MSWLFs").¹ Under this regulatory scheme, state solid waste facility permitting programs, containing standards at least as stringent as the federal guidelines, may receive EPA approval and the state enforcement agency may receive primacy for enforcement of the standards.² While RCRA and the MSWLF regulations do not specifically authorize tribal program approval, the "Draft State/Tribal Implementation Rule" recently issued by EPA recognizes the authority and jurisdiction of tribes and establishes a framework for tribal program approval under the MSWLF

¹ 40 C.F.R. Part 258.

² 40 C.F.R. § 258.1; See also Draft State Tribal Implementation Rule, to be codified at 40 C.F.R. Part 239.

The Honorable Bill Richardson, Chairman
July 28, 1994
Page 2

regulations. While both RCRA and the MSWLF regulations typically refer to "State Plans"³ or "approved states,"⁴ we believe that Congress did not intend to limit permitting program approval to states. In fact, S. 720 indicates that the bill's sponsors assume that tribes have the authority to promulgate standards for the management of solid waste that are distinct and separate from state requirements. However, under the general definitions found in RCRA, tribes are distinguished from states, and for some purposes, most notably funding for solid waste management planning, tribes are treated as municipalities.⁵ We do not believe that these definitions can be used to limit tribal program approval, but do believe that the absence of specific statutory authorization may result in unnecessary litigation.

Currently two tribes are in the final stages of the MSWLF permitting program approval process: the Cheyenne River Sioux Tribe and the Campo Band of Mission Indians. The Campo program has been thoroughly reviewed by the EPA, presented at a public hearing, and presently is subject to a public comment period. At least one comment has raised a question relating to the appropriateness of EPA approval of a tribal MSWLF permitting program and argues that, under RCRA, only states have the right to develop permitting programs and that those programs, of necessity, will include jurisdiction over Indian lands. The Campo Band has been in the process of developing economic resources that include the construction and operation of a commercial solid waste management facility for the past eight years. One component of the facility is to be a sanitary landfill that fully complies with the federal MSWLF requirements. The Band has developed a system of solid waste management laws that not only have been found to comply with the federal requirements, but also have been found fully equivalent to corresponding California provisions by the appropriate California agencies. To allow the absence of specific language authorizing EPA approval of tribal permitting programs to interfere with tribal development and management of environmental quality within Indian Country is unfair.

This issue is not new. A corresponding argument was raised by the State of Washington under Subtitle C of RCRA.⁶ In Washington Department of Ecology, the Ninth Circuit Court of Appeals addressed the issue of state and federal jurisdiction over Indian reservations under RCRA. The State of Washington submitted an application to the EPA for primacy under the hazardous waste provisions of RCRA, including plans to regulate the activities of all persons on Indian lands within the state. The EPA disapproved the application with respect to Indian lands, but approved the plan for the rest of the state. The state appealed the decision. The court held

³ 42 U.S.C. § 6943-6947; 40 C.F.R. § 258.1.

⁴ 40 C.F.R. § 258.1.

⁵ 42 C.F.R. § 6903(13).

⁶ State of Washington Department of Ecology v. United States Environmental Protection Agency, 752 F.2d 1495 (9th Cir. 1985) (hereinafter "Washington Department of Ecology").

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that the EPA properly refused to approve the program as it applied to Indian lands noting that, under well-settled principles of Indian law, "[s]tates are generally precluded from exercising jurisdiction over Indians in Indian Country unless Congress has clearly expressed an intention to permit it."⁷ Additionally, the court found that EPA's retention of environmental authority over Indian lands is consistent with the United States' trust responsibility to tribes.⁸ In declining to subordinate tribes to state authority under RCRA, the court further stated that:

[T]he tribal interest in managing the reservation environment and the federal policy of encouraging tribes to assume or at least share in management responsibility are controlling. We cannot say that RCRA clearly evinces a Congressional purpose to revise federal Indian policy or diminish the independence of Indian tribes

We therefore conclude that EPA correctly interpreted RCRA in rejecting Washington's application to regulate all hazardous waste-related activities on Indian lands.⁹

The question therefore becomes whether, absent specific authority, the EPA has the power delegate authority for development of programs to tribes. Again, Washington Department of Ecology provided guidance:

EPA has carried out the [federal] policy of self-determination in administering the various environmental statutes. For example, EPA promulgated regulations under FIFRA [the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 7474(c)] authorizing tribes to develop their own programs for certification of pesticide applicators, at a time when the statute provided only that "states" could submit certification plans. Similarly, EPA delegated to Indian tribes the authority to classify their reservations under the "Prevention of Significant Deterioration" standards of the Clean Air Act, even though the Act did not specifically authorize such delegation. . . . Congress subsequently amended both statutes expressly to permit tribal participation as set forth in the regulations. We cannot foreclose the possibility of similar developments under RCRA.¹⁰

⁷ Id. at 1469-1470.

⁸ Id. at 1470.

⁹ Id. at 1472 (citations omitted).

¹⁰ Id. at 1471 (citations omitted).

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Citing an earlier opinion, the court stated that, despite statutory language delegating primacy to states, the Clean Air Act "permitted EPA to allow tribes to set their own air quality goals on their reservations" and declined to subordinate "tribes to state authority."¹¹

To prevent litigation of issues similar to those raised in Washington Department of Ecology and in consideration of the above noted congressional actions amending FIFRA and the Clean Air Act after EPA's promulgation of regulations allowing tribal primacy, Subtitle D of RCRA now should be amended to authorize treatment of tribes as states.

Because S. 720 contemplates development of tribal standards for operations of solid waste facilities that are at least as stringent as those promulgated by the EPA under RCRA,¹² and because the bill establishes programs not available to non-Indian municipalities, this legislation is an appropriate vehicle to authorize treatment of tribes as states the Resource Conservation and Recovery Act of 1979. We therefore recommend that S. 720 be amended to include a provision authorizing the EPA to treat Indian tribes as states under Subtitle D of RCRA. As always, we appreciate your work on this issue. Please feel free to call if we can provide anything further.

Sincerely,

GOVER, STETSON & WILLIAMS, P.C.

By Kevin Gover
 by Kevin Gover
 KG

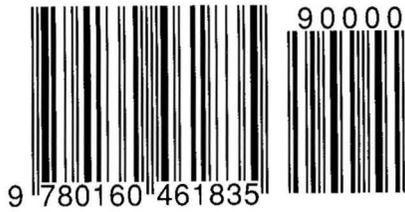
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¹¹ Id. at 1472.

¹² S. 720, Section 3(1).



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