EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment or otherwise manage. The purpose of this requirement is to inform the public and government officials about chemical management practices of specified toxic chemicals.

The current reporting requirements apply to facilities in the manufacturing sector (Standard Industrial Classification codes 20–39), that have 10 or more full-time employees, and that manufacture, process, or otherwise use one or more chemicals on the section 313 list of toxic chemicals above certain reporting thresholds.

EPA has been in the process of evaluating several industries for potential addition under EPCRA section 313. EPA has developed an issues paper that presents background information on this effort, EPA's analytical approach, preliminary findings that indicate which industries may be potential candidates for addition, and several issues that will affect how these facilities might be affected if they were to be covered under EPCRA section 313. Copies of this issues paper will be available on or before May 1, 1995, from the address or telephone number cited under FOR FURTHER INFORMATION CONTACT. Oral statements will be scheduled on a first-come first-serve basis by calling the Emergency Planning and Community Right-to-Know Hotline at the number listed under FOR FURTHER INFORMATION CONTACT. All statements will be made part of the public record and will be considered in the development of any proposed rule amendment.

Dated: April 21, 1995.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–10620 Filed 4–28–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5198–9]

Campo Band of Mission Indians; Final Determination of Adequacy of Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Full Program Adequacy for the Campo Band of Mission Indians Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal Municipal Solid Waste Landfill Criteria (40 CFR part 258 or Federal Criteria). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate ''permit'' programs for municipal solid waste landfills (MSWLFs). EPA believes that adequate authority exists under RCRA to allow tribes to seek an adequacy determination for purposes of sections 4005 and 4010.

The Campo Band of Mission Indians (Campo Band) applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed the Campo Band's application and proposed a determination that the Campo Band's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the Campo Band's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the Campo Band shall be effective on May 1, 1995.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Christiane M. Camp, Mail Code H–W–3, telephone (415) 744–2097.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, requires states (and, as discussed below, allows Indian tribes) to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Section 4005 of RCRA also requires that EPA determine the adequacy of state MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal landfill permit programs. As explained below, the Agency intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. These approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements.

EPA is extending to tribes the same opportunity to apply for permit program approval as is available to states. Providing tribes with the opportunity to apply for adequacy for purposes of adopting and implementing permit programs is consistent with the *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984) (EPA's Indian Policy). This Policy, formally adopted in 1984, recognizes tribes as the primary sovereign entities for regulating the reservation environment and commits the Agency to working with tribes on a ''government-to-government'' basis to effectuate that recognition. A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to tribal assumption of federal environmental programs. Today's determination to approve a tribal MSWLF permit program represents another facet of the Agency's continuing commitment to the implementation of this long-standing policy.

EPA's interpretation of RCRA is governed by the principles of *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984). Where Congress has not directly addressed the precise question at issue or otherwise explicitly stated its intent in the statute or in legislative history, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. Interpreting RCRA to allow tribes to apply for an adequacy determination satisfies the *Chevron* test.

States generally are precluded from enforcing their civil regulatory programs in Indian country, absent an explicit Congressional authorization. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Yet, under the current statutory scheme, EPA generally is precluded from enforcing the federal Criteria as well. Furthermore, Congress has not yet created an explicit role for tribes to implement the RCRA Subtitle D program, as it has done under most other major environmental statutes amended since 1986 (Safe Drinking Water Act; Comprehensive Environmental Response, Compensation and Liability Act; Clean Water Act; Clean Air Act).

To have its permit program deemed adequate by EPA, a tribe must have adequate authority over the regulated activities. Indian reservations may

include lands owned in fee by non-Indians. The extent of tribal authority to regulate activities by non-Indians on such land has been the subject of considerable recent discussion. For further explanation of this issue, see EPA's tentative determination of the adequacy of the Campo Band's solid waste program, 59 FR 24422, 24425–24427 (May 11, 1994). As explained in the tentative determination, all land within the Campo Reservation is tribal trust land; there is no fee land owned by non-Indians on the Campo Reservation. As further explained in the tentative determination, the Campo Band has established that it has adequate jurisdiction over the Campo Reservation based on general principles of tribal sovereignty, the Campo Band's status as a ''federally recognized Indian Tribe'', the Tribal Constitution, a map and narrative description which established the boundaries of the Reservation, and Tribal codes and regulations.

By today's action, EPA is continuing to follow its policy of approving state/tribal permit programs prior to the promulgation of STIR. As explained in the tentative determination, as well as in previous state program approvals, EPA interprets the requirements for states or tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised Federal Criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b)(1) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved program.

EPA further requests tribes to provide a statement of legal authority from the tribal Attorney General or its equivalent demonstrating that the tribe has adequate jurisdiction to regulate MSWLFs on the reservation. In addition, EPA requests tribes seeking program approval to demonstrate that they: (1) Are federally recognized; (2) have a government exercising substantial duties and powers; and (3) are capable of administering a permit program. If the tribe has already demonstrated to EPA that it meets the first two of these criteria in the context of obtaining a grant or the approval to operate another EPA program, it need not do so again. EPA also requests tribes to provide an explanation of the jurisdiction and responsibilities of all tribal program implementing agencies (including any state agency acting pursuant to an agreement with the tribe) and to designate a lead agency to facilitate communications between EPA and the tribe. If a tribe has already provided information and/or a legal statement on the tribe's jurisdiction and capability under another EPA program, EPA requests the tribe to provide only those additional materials necessary to support its application for permit program approval. These requests incorporate the criteria used in other environmental statutes to assess whether tribes may receive grants or program approval.

II. Campo Band of Mission Indians

On February 15, 1994, the Campo Band submitted an application for adequacy determination. On May 11, 1994, EPA published a tentative determination of adequacy for the Campo Band's program. Further background on the tentative determination of adequacy appears at 59 FR 24422 (May 11, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. On June 30, 1994, at 7 p.m. EPA held a public hearing. Numerous comments were made at the hearing. EPA also received numerous written comments during the public comment period, which EPA extended until August 1, 1994. 59 FR 34812 (July 7, 1994).

III. Responses to Comments

The following are EPA's responses to the written and oral comments received during the public comment period and at the public hearing.

A. EPA's Authority to Approve Tribal Programs

Several commenters asserted that EPA does not have the authority to approve tribal solid waste programs under RCRA. These comments raised a number of legal and policy issues which are discussed below.

1. Summary of the Agency's Position

The Campo Band applied for a determination of adequacy under Subtitle D of RCRA, as amended (42 U.S.C. 6941–6949a). Section 4005(c)(1)(B) of RCRA requires states to develop and implement permit programs to ensure that MSWLFs which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal Criteria for MSWLFs, 40 CFR part 258. Section 4005(c)(1)(C) requires EPA to determine whether states have adequate ''permit'' programs.

EPA believes that RCRA allows tribes to seek an adequacy determination for purposes of sections 4005 and 4010 in the same manner as the states.

EPA's interpretation of RCRA is governed by the principles of Chevron, supra. Where Congress has not spoken directly to the precise question at issue or otherwise explicitly stated its intent in the statute or in legislative history, the administering Agency's interpretation of the statute is entitled to deference if it is based on a permissible construction of the statute. Chevron, 467 U.S. at 843. In step one of the Chevron test, a court looks first to whether Congress has specifically addressed the relevant issue.[1] If not, a court proceeds to step two to decide whether the interpretation offered by the administering agency is reasonable in light of the goals and purposes of the statute. See, e.g., American Mining Congress v. EPA, 965 F.2d 759 (9th Cir. 1992).

The Supreme Court stated in Chevron that the principle of deference to administrative interpretations of a statute ''has been consistently followed by this Court whenever a decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations.'' 467 U.S. at 844. In interpreting the meaning and reach of Subtitle D of RCRA, the Agency has undertaken to reconcile RCRA with broad federal mandates, analogous environmental statutes, EPA's longstanding Indian Policy and relevant principles of federal Indian law.

EPA's Indian Policy, formally adopted in 1984 and reaffirmed by each EPA Administrator since, recognizes tribes as the primary sovereign entities for

[1].One commenter argued that EPA has misread the Chevron test to allow EPA to fill a statutory gap when Congress has adopted a provision but failed to state its intent in doing so. See 59 FR 24422, 24423 (May 11, 1994). According to this comment, Chevron applies only when Congress has failed to adopt a specific provision. EPA notes that the exact language is whether ''Congress has not directly addressed the precise question at issue.'' 467 U.S. at 843. This may occur either where Congress has failed to adopt a specific provision *or* where the provision adopted is not clear as to the specific issue. In the situation of Indian tribes and RCRA Subtitle D, both problems occur, as discussed below.

regulating the reservation environment and commits the Agency to working with tribes on a ''government-to-government'' basis to effectuate that recognition. A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to tribal assumption of federal environmental programs. Providing tribes with the opportunity to implement permit programs represents another facet of the Agency's continuing commitment to the implementation of this long-standing policy.

In the case of other environmental statutes which initially did not have explicit provisions concerning treatment of Indian tribes in the same manner as states, such as the Clean Water Act, EPA, in accord with its Indian Policy, has worked to ensure that Congress revises them at the earliest opportunity to define explicitly the role for tribes under these programs. Congress added the provisions of the Clean Water Act that specifically allow tribes to be treated in the same manner as states in 1987. Clean Water Act section 518, 33 U.S.C. 1377.

However, EPA also has stepped in on at least two occasions to allow tribes to seek program approval despite the lack of an explicit Congressional mandate. EPA has recognized Indian tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the tribal role under EPCRA. 55 FR 30632 (July 26, 1990). EPA also filled a statutory gap in the Clean Air Act even before development of its Indian Policy. In 1974, EPA authorized Indian tribes to redesignate the level of air quality applicable to Indian country under the Prevention of Significant Deterioration (PSD) program in the same manner that states could redesignate for other lands. This decision was upheld in *Nance* v. *EPA*, 645 F.2d 701 (9th Cir. 1981). EPA believes the current situation to be analogous to these situations.

One commenter asserted that Nance was the only authority cited by EPA in support of the Agency's position that it has authority to approve tribal programs. This commenter listed several facts distinguishing the circumstances in the Nance case from the present determination. However, as explained more fully throughout these responses to comments, Nance is not EPA's sole support for today's action. EPA's interpretation is based on a number of authorities, including several cases—*Chevron, supra, Cabazon, supra, State of Washington, Department of Ecology* v. *U.S. EPA*, 752 F.2d 1465 (9th Cir. 1985) (discussed below), and others— as well as EPA's Indian Policy. Furthermore, EPA reiterates the fact that the Nance court held that under a federal statute silent as to jurisdiction in Indian country, EPA correctly allowed the Tribe, rather than the State, to ''exercise control...over the entrance of pollutants onto the reservation''. That is precisely what EPA's action today will do.

2. Applicability of Chevron

EPA received several general comments which suggest that the Chevron test does not apply to the interpretation of RCRA at issue here. The Agency disagrees with these comments.

Several facts create a gap in the implementation of RCRA. First, Congress did not directly speak to the issue of how a MSWLF regulatory program should be implemented in Indian country. In *Washington*, the Ninth Circuit upheld EPA's decision to exclude Indian country from the approved State hazardous waste program, stating that ''RCRA does not directly address the problem of how to implement a hazardous waste management program on Indian reservations.'' 752 F.2d at 1469. Second, under the current statutory scheme as implemented, EPA is generally precluded from enforcing federal requirements on MSWLFs. Section 4005(c) of RCRA only allows EPA to enforce the 40 CFR part 258 Criteria after a finding of inadequacy of the state permit program, indicating Congress' preference for non-federal oversight of MSWLFs. Third, it is a well-settled principle of federal Indian law that states are precluded from exercising civil regulatory authority in Indian country unless Congress has expressly authorized them to do so. *Cabazon, supra; Santa Rosa Band of Indians* v. *Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied* 97 S.Ct. 731 (1977); *Washington*, 752 F.2d at 1469–1470. These facts leave open the question of how MSWLFs will be regulated in Indian country.

A gap in the administrative scheme of a statute indicates that Congress has delegated implicitly to the administrative Agency the authority to interpret the statute in a way that fills the gap. *Washington*, 752 F.2d at 1465. This interpretation is to be upheld if it is based on a permissible construction of the statute and reasonably promotes the goals and purposes of the statute. *Chevron*, 467 U.S. at 843. The Agency's determination that RCRA Subtitle D allows Indian tribes to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258 is not only a permissible interpretation of RCRA, but is the most reasonable interpretation of RCRA given the strong legal and policy considerations in favor of promoting tribal sovereignty, and Congress' preference for non-federal oversight of MSWLFs.

3. Existence of a ''Gap'' in MSWLF Regulation

EPA also received comments that *Chevron* should not apply because there is no gap in the regulatory program for EPA to fill. According to these comments, the case of *Coalition for Clean Air* v. *EPA*, 971 F.2d 219 (9th Cir. 1992) should govern this issue. *Coalition* involved interpreting a provision of the Clean Air Act. Under the Clean Air Act, states are to submit proposals for State Implementation Plans (SIPs) allowing for attainment of National Ambient Air Quality Standards (NAAQS) by the statutory deadline. If EPA disapproves the state's proposed SIP, EPA must establish a Federal Implementation Plan (FIP) to take the place of the SIP. As noted in *Coalition*, EPA had disapproved California's proposed SIP for the South Coast and was in the process of finalizing a FIP for the South Coast when Congress passed the Clean Air Act Amendments of 1990. 971 F.2d at 222–223. The Amendments changed the criteria and timetables for NAAQS attainment. EPA argued that the changes relieved EPA of the obligation to promulgate a FIP and made it incumbent upon California to try again and submit a new SIP proposal. *Id.*

In *Coalition*, the Ninth Circuit declined to defer to EPA's interpretation for three reasons. First, the court found that the plain language of the Clean Air Act expressed Congress' intent to require EPA to promulgate a FIP. The court also found that legislative history did not support EPA's interpretation. Finally, the court held that EPA's interpretation was not entitled to deference because EPA had previously argued the opposite to Congress—that unless the statute were amended, EPA would be obligated to promulgate FIPs. The court pointed out that the change in EPA's interpretation did not reflect accumulated experience or respond to changing circumstances, nor was the change justified with reasoned analysis. Rather, the court found that EPA was merely asking the court to do what Congress would not.

The factors that lead the Ninth Circuit to reject EPA's interpretation of the Clean Air Act in *Coalition* are not present here. As discussed in more detail below, the plain language of RCRA does not express Congress' intent

with respect to regulation of solid waste in Indian country. As discussed below, the legislative history supports EPA's position that Congress did not intend to abrogate tribal sovereignty and give states jurisdiction over solid waste management in Indian country. Finally, EPA's interpretation is consistent with the Agency's long-standing Indian Policy and previous statements about the regulation of solid waste.

Finally, the commenter argued that *Chevron* deference is less appropriate when an Agency adopts a statutory interpretation that is inconsistent with past policy and the new interpretation is not triggered by a change in the law or a problem arising from the previous interpretation, or accompanied by a reasoned analysis of the need for a change. The comment cites the preamble to EPA's 1979 guidelines for development and implementation of state solid waste management plans, which provides that ''states with Indian Lands should therefore address solid waste management on these lands in accord with treaties and State policy.'' 44 FR 45078–79 (July 31, 1979). The comment also cites the regulation itself which provides that ''the State plan shall provide for coordination, where practicable, with solid waste management plans in neighboring States and with plans for Indian Reservations in the State.'' 40 CFR 256.50(m) (1979). EPA disagrees that these provisions render deference to the Agency's interpretation of RCRA less appropriate. EPA has not changed its position. The provisions cited do not order states to regulate Indian country, but instead recognize that states are generally precluded from exercising regulatory authority over Indian country, and support EPA's long-standing policy that tribes are the appropriate non federal sovereign to regulate the environment in Indian country. The cited provisions suggest that EPA recognized that solid waste management plans in Indian country are *separate* from the plans in effect for the surrounding state, just as are plans in other states. EPA explained in the preamble that it added § 256.50(m) ''to encourage coordination with tribal solid waste management programs.'' 44 FR 45079 (July 31, 1979).

Under the citizen suit provisions of RCRA citizens can enforce the 40 CFR part 258 regulations. According to some of the comments, this means there would be no gap in enforcement of the MSWLF requirements in Indian country. While EPA acknowledges that the requirements of 40 CFR part 258 would be in effect in Indian country even if tribes could not obtain approval of their MSWLF permit programs, this would not achieve the same programmatic results. The ability to file a citizen suit under section 7002 of RCRA when a MSWLF fails to operate properly is not comparable to having a primary and complete system in place for solid waste management. Moreover, citizens have the right to sue regardless of the status of a state or tribal program. The existence of citizen suit enforcement of the Federal criteria is therefore irrelevant to the issue of how to fill the gap that exists in the permitting of MSWLFs in Indian country. Congress has not provided a mechanism that would be equivalent to recognizing tribal authority directly.

One commenter asserted that, through the citizen suit provision (which would subject any owner or operator of an MSWLF—including tribes and non-Indian landfill owners or operators in Indian country—to enforcement) Congress abrogated tribal sovereignty. The commenter implies that Congress intended for states to regulate solid waste management in Indian country. EPA disagrees. The fact that tribes or non-Indian operators in Indian country are subject to RCRA citizen suits does not imply Congressional intent to deprive tribes of their authority to regulate the environment within their jurisdiction. The same citizen suit provision of RCRA also subjects states and the federal government to citizen suits; the commenter's argument would imply Congressional intent to deprive states and the federal government of their authority to regulate as well. The purpose of the citizen suit provision is to provide a back-up system when the authorized government regulatory agency fails to enforce the relevant environmental standards.

One commenter also argued that EPA could instead fill the gap in permitting authority by promulgating reservation-specific MSWLF standards for interested tribes in place of the nationwide 40 CFR part 258 requirements. EPA acknowledges this may be a potential alternative. But, consistent with EPA's Indian policy and its emphasis on tribal self-government, the Agency believes that tribes should be given the opportunity to operate the program directly where the statute allows for such authority. The comment merely offers an alternative method of filling the gap, implicitly recognizing that a gap exists to be filled under *Chevron*.

One commenter argued that EPA may not fill the statutory gap in the treatment of Indian tribes under RCRA unless and until it attempts to remove existing statutory and regulatory ''barriers'' to treating tribes in the same manner as states. EPA disagrees that it must take other actions before adopting today's interpretation. Congress has not amended RCRA since 1984. EPA has recommended for several years that an Indian tribes provision be added to the statute, and draft provisions have appeared in bills introduced in the 101st and 102nd Congresses. A comprehensive RCRA reauthorization bill was not introduced in the 103rd Congress. So EPA has endeavored to bring this issue before Congress, but Congress has not amended the statute in any form. Nonetheless, EPA believes that no statutory or regulatory barriers exist that would prevent treatment of tribes in the same manner as states under RCRA Subtitle D. *Chevron* allows EPA to specify a role under RCRA Subtitle D for tribes to implement MSWLF permit programs in Indian country.

4. RCRA Definition of ''Municipality''

One commenter argued that states have authority over Indian tribes for the purposes of RCRA because tribes are included in the definition of ''municipality'' rather than in the definition of ''state''. This commenter asserted that the Agency goes beyond ''filling gaps'' in its interpretation of RCRA, and ''creates a program from whole cloth'' that ''directly conflicts with Congress' law.'' According to the comment, Congress has directly addressed the precise issue of how tribal solid waste programs are to interrelate with state and federal programs by including Indian tribes in the definition of ''municipality'', rather than ''state''. ''State'' is defined to mean:

(A)ny of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

RCRA section 1004(31).

The only mention of tribes in the statute is in section 1004(13), a part of the ''definitions'' section of RCRA. Section 1004(13) defines the term ''municipality'' to mean:

(A) city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization(.)

RCRA does not explicitly define a role for tribes under sections 4005 and 4010 and therefore reflects an ambiguity in congressional intent. The Agency believes that the commenter has misconstrued the significance of the definitions. ''Municipalities'' are

mentioned in sections 4003(c)(1)(C), 4008(a)(2), 4008(a)(3)(C), 4008(g)(1) and 4009(a) of RCRA, all of which reference the availability of federal funds and technical assistance for solid waste planning and management activities by municipalities. It is therefore the Agency's interpretation of these provisions that Congress intended to provide that tribes could receive federal funding and assistance for solid waste planning and management activities when available in the same manner as municipal governments, but that Congress did not otherwise intend to limit the scope of tribal regulatory authority over solid waste management in Indian country. In other words, absent an indication from Congress to the contrary, EPA believes that inclusion of Indian tribes in the definition of ''municipality'' was merely a definitional expedient used to avoid having to include the phrase ''or an Indian tribe or authorized tribal organization or Alaska Native village or organization'' wherever the term ''municipality'' appeared, not to change the sovereign status of tribes for RCRA purposes.

Another comment cites Sutherland on Statutory Construction § 46.01 (5th ed. 1992) for the principle that ''unless the defendants can demonstrate that the natural and customary import of the statute's language is either repugnant to the general purview of the act or for some other compelling reason should be disregarded, the court must give effect to the statute's plain meaning.'' First, as discussed above, EPA believes that the language of RCRA contains no ''plain meaning'' with respect to jurisdiction over solid waste management in Indian country. Second, EPA believes that federal Indian law and EPA's Indian Policy provide a sufficiently ''compelling reason'' to overcome the inference that states have jurisdiction over solid waste management in Indian country that the commenter would draw from the statutory definition of ''State'' and ''municipality''.

Many references are made to ''local governments'' or ''local authorities'' in RCRA. *See, e.g.*, sections 4006(a); 4006(b); 4006(c)(2). One commenter argued that the term ''municipality'' should be substituted for these references, and that tribes should be treated the same as municipalities for all purposes of RCRA Subtitle D. This would result in Indian tribes being brought under state control for the purposes of section 4006, which specifies procedures for the development and implementation of state solid waste plans. EPA believes, however, that these terms were not intended to include Indian tribes. The term ''municipality'' could have easily been used instead of these references. By contrast, the term ''municipality,'' which by definition includes Indian tribes, is used with reference to the availability of federal funds and technical assistance for solid waste planning and management activities. Thus, EPA believes that Congress did not intend to refer to Indian tribes and local governments interchangeably nor to affect the sovereign status of tribes in such an indirect way in RCRA.

It is a reasonable interpretation of RCRA that the use of the explicitly defined term ''municipality'' was limited to those areas that Congress wanted to apply to both local governments and Indian tribes, while the terms ''local governments'' or ''local authorities'' were used for those provisions that were to apply to local governments and not to Indian tribes. As discussed above, however, it is a reasonable interpretation of RCRA that Congress did not intend, simply by defining ''municipality'' to include tribes, to abrogate Indian sovereignty and subject all solid waste management activities in Indian country to state regulatory authority.

An examination of the legislative history of RCRA further supports EPA's position that Congress did not directly address the management of solid waste in Indian country. The first Solid Waste Disposal Act did not define ''municipality.'' Solid Waste Disposal Act (SWDA), Pub. L. No. 89–272, Title III Sec. 203, 79 Stat. 983, 990–991 (1965). The definition of municipality was added by the Resource Recovery Act of 1970, and included ''Indian tribe''. Pub. L. No. 91–512, Title I Sec. 102, 84 Stat. 1227, 1228 (1970). Congress then enacted the Resource Conservation and Recovery Act of 1976, which contains the definition of ''municipality'' currently in the statute, adding ''or authorized tribal organization or Alaska Native village or organization''. Pub. L. No. 94–580, Title II, Sec. 1004, 90 Stat. 2795, 2800 (1976). There is no legislative history explaining why Congress included Indian tribes and other Indian organizations in the definition of ''municipality''. *See* H.R. Rep. No. 1155, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 4552; S. Rep. No. 1034, 91st Cong., 2d Sess. 27, (1970); H.R. Conf. Rep. No. 1579, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 4559; H.R. Rep. No. 1491, 94th Cong., 2d Sess., *reprinted in* 1976 U.S.C.C.A.N. 6238; S. Rep. No. 869, 94th Cong., 2d Sess. 1 (1976); S. Rep. No. 988, 94th Cong., 2d Sess. 1 (1976).

There is no further mention of the definitions or of the role of tribes in the legislative history of RCRA. There is also no indication in the legislative history that Congress ever attempted to conduct an examination of the social, legal and political ramifications that the submission of tribes to state regulatory authority in the area of hazardous waste management would occasion. The fact that Congress did not conduct such an examination or otherwise directly address the precise issue in the legislative history supports EPA's contention that Congress did not in fact have a specific intent with regard to implementation of RCRA in Indian country.

As mentioned above, principles of federal Indian law also support the Agency's interpretation of RCRA under *Chevron*. Federal Indian law mandates that a statute be construed liberally in favor of Indians. *See Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766–767 (1985), and *Washington*, 752 F.2d at 1469–1470. Liberally construed in favor of the *states*, the inclusion of Indian tribes in the definition of ''municipality'' might constitute an *implicit* argument for the limitation of Indian sovereignty, but the Agency is obligated to read RCRA in favor of tribal authority and to uphold the principles of tribal sovereignty unless Congressional directives to the contrary are clearly expressed.

The commenter seeks to read into an ambiguous statute Congressional intent to deny tribes a significant regulatory authority. This is inconsistent with federal Indian law, as discussed above. EPA cannot assume that Congress, by including Indian tribes in the definition of ''municipality'' in RCRA section 1004(13), intended to submit the sovereign authority of the various Indian tribes throughout the nation to that of the various states in which they reside for the purposes of RCRA. Neither the statutory text nor the legislative history of RCRA support this reading of the statute.

One commenter supported the conclusion that, as a general rule, Indian tribes that are sovereign nations are not subject to state solid waste management requirements. This commenter stated that courts will permit state requirements to extend to sovereign tribal lands only if the state interests clearly outweigh tribal and federal interests, and that the U.S. Supreme Court has rarely found such interests to exist. This is consistent with EPA's analysis of federal Indian law, discussed above.

Another commenter argued that EPA's proposal to treat Indian tribes in the

same manner as states for purposes of section 4005 is inconsistent with its decision not to waive MSWLF financial assurance requirements for Indian tribes that operate landfills, as EPA had waived for state-operated landfills. (*See* 56 FR at 51107–08 (Oct. 9, 1991); 40 CFR 258.70(a)). In this commenter's view, EPA's decision suggests that EPA considers tribes to be equivalent to municipalities for RCRA Subtitle D purposes. EPA disagrees. As is explained in detail in the preamble to the Federal Criteria rule, EPA proposed, but ultimately decided against, exempting Indian tribes from the financial assurance requirements imposed on local governments. EPA decided that Indian tribes, ''for reasons similar to those'' upon which the Agency based its decision not to exempt municipalities from the financial assurance requirements, ''do not have the requisite financial strength to ensure funding of their closure, post-closure and corrective action obligations''. 56 FR at 51108. EPA did not say anything to suggest a position that Indian tribes were subject to state regulatory control as are local governments or municipalities. Nor did EPA suggest that tribes lack the sovereign regulatory authority over MSWLF activities in Indian country necessary to administer an EPA-approved landfill permit program. Therefore, there is no inconsistency between the Agency's position in that rule and in today's notice.[2]

5. RCRA Definition of ''State''

One commenter asserted that Congress could easily have included Indian tribes in the definition of ''state,'' and that the fact that Congress did not do so indicates that Congress did not want to give tribes a sovereign role for RCRA purposes. While the scant legislative history allows for little comment on Congress' motives in not explicitly allowing Indian tribes to be treated in the same manner as states, EPA believes that, had Congress clearly intended to preclude Indian tribes from operating in the same manner as states for purposes of RCRA Subtitle D, it would have made that clear in the language or legislative history of the 1984 Amendments. This commenter also noted that the regulations in 40 CFR part 258 refer to actions taken by the ''State Director'', and that no officials of the Campo Band or the Campo Environmental Protection Agency (CEPA) fit EPA's definition of that term. However, EPA believes it has the authority to interpret its own regulations in a manner consistent with the statutory purpose for which those regulations were adopted. As discussed above, *Chevron* gives EPA the authority to interpret RCRA to allow for treatment of tribes in the same manner as states for purposes of program approval. EPA's use of the term ''State Director'' in the landfill regulations may be read to include tribal officials serving the function of a State Director in order to effectuate EPA's permissible interpretation of RCRA.

6. The Relevance of Washington Dept. of Ecology v. EPA

Several commenters challenged EPA's reference to other environmental statutes to support its argument concerning treatment of Indian tribes under RCRA. EPA's reference to other environmental statutes to interpret state and tribal authority in the implementation of solid waste permitting programs was implicitly approved by the Ninth Circuit in *Washington:*

> Implementation of hazardous waste management programs on Indian lands raises questions of Indian policy as well as environmental policy. It is appropriate for us to defer to EPA's expertise and experience in reconciling these policies, gained through administration of similar environmental statutes on Indian lands.

One commenter stated that EPA seeks to create a ''vacuum'' in the implementation and enforcement of Subtitle D of RCRA by asserting that the states are generally precluded from regulating MSWLFs on tribal lands. This commenter stated that *Washington* supports the commenter's assertion that statutes are to be read in a manner that does not find a vacuum, and therefore EPA's interpretation of RCRA's administrative scheme is contrary to *Washington*. EPA disagrees that its position is inconsistent with *Washington*. The Ninth Circuit in *Washington* in fact upheld EPA's denial of the State's application to regulate hazardous waste in Indian country, because under federal Indian law states are generally precluded from exercising civil regulatory authority over Indian country. EPA denied the portion of the State of Washington's application that sought to regulate hazardous waste in Indian country because the State had failed to demonstrate adequate jurisdiction.

This commenter further argued that the holding in *Washington* that states lack authority to regulate waste activities on Indian lands should be limited to Subtitle C of RCRA because ''(w)here hazardous waste is concerned, the state plays no role until the * * * EPA doles it out * * * Where solid waste is concerned, the EPA plays no role unless the state fails to give that aspect of the program proper attention.'' However, this argument does not reach the question of state versus tribal authority. Even if EPA does not issue permits for MSWLFs in Indian country as it does for certain Subtitle C facilities, this does not mean that Indian tribes are not allowed to implement MSWLF permitting programs in the same manner as the states. Approving tribal MSWLF permitting programs would uphold EPA's general policy of encouraging non-federal implementation and enforcement of the Federal Criteria as does states' proper implementation of MSWLF permitting programs on land within the state's jurisdiction.

Further, the argument that *Washington* should be limited to Subtitle C of RCRA ignores the fact that the definitions of section 1004(13) and the corresponding legislative history, as discussed above, are applicable to all of RCRA. The legislative history was insufficient to express Congressional intent to extend state jurisdiction over Indian country with respect to Subtitle C. It is also insufficient to extend state jurisdiction over Indian country with respect to Subtitle D of RCRA.

7. EPA May Properly Allow Tribes to Submit Applications for Approval of Their MSWLF Permit Programs at the Tribes' Discretion

One comment criticizes EPA for allowing Indian tribes to seek approval of their MSWLF permit programs in the same manner as States, but not requiring Indian tribes to submit a program as States are required under section 4005(c). As EPA explained in the proposed approval, Congress did not explicitly specify a role for tribal permit programs under Subtitle D of RCRA. EPA is therefore unwilling to ascribe to Congress the specific intent to *require* tribes to submit landfill permit programs as Congress clearly intended for States. Furthermore, even if EPA were to mandate that tribes submit such programs, the only effects of a failure to submit are: (1) EPA may determine there to be no adequate program in place and

[2].The commenter also asserted that EPA used the terms ''local government'' and ''municipality'' interchangeably in the proposed and final landfill criteria rule, and that EPA implicitly asserted that ''Indian tribes'' should be considered local governments for MSWLF purposes. A close examination of the language makes clear that EPA thought that Indian tribes were similar to local governments, but quite separate from them. For instance, one section of the preamble to the final rule is titled ''Concerns Regarding Local Government and Indian Tribe Impacts''. 56 FR at 50980; the section discussing the financial assurance issue discusses Indian tribes separately from local governments. *Id.* at 51107.

thus that it has authority to enforce the 40 CFR part 258 Criteria directly (RCRA section 4005(c)(2)), and (2) the tribe would not be eligible for grant funds to operate its landfill program (RCRA section 4007). If a State (or tribe) elects not to submit a program, it may lose out on federal assistance, but Congress specified no other penalty. In addition, unlike the situation in most States, on some reservations, all solid waste may be disposed off-reservation. Thus, EPA sees no particular benefit to imposing an explicit requirement on tribes to submit a program.

Another comment argued that EPA may not require States to demonstrate their jurisdiction over Indian lands when seeking approval of a landfill permit program, since States ''must have jurisdiction in order to meet the statutory mandate.'' This statement merely begs the question of whether states *do* have such jurisdiction. Nonetheless, EPA believes this issue is more properly addressed in the context of an individual State application for program approval.

8. EPA May Establish Self-implementing Landfill Criteria Where an Approved Adequate State or Tribal Program is Not in Place

The State of Alaska submitted comments that the Agency's tentative determination to approve the Campo Band permit program is invalid because EPA does not have the authority under RCRA Subtitle D to promulgate self-implementing criteria for the disposal of solid waste. EPA's regulations in 40 CFR part 258 are ''self-implementing'' in that they apply directly to owners and operators of MSWLFs, and need not be imposed through a permit or other agency action. Alaska argued that EPA can only establish guidelines for the disposal of solid waste under RCRA section 1008(a) and that RCRA section 4004(a) only provides the Agency with the authority to provide definitions for what constitutes ''open dumping'' of solid waste. Alaska also argued that the Hazardous and Solid Waste Amendments of 1984, including RCRA sections 4005(c) and 4010(c), did not broaden EPA's authority with regard to the regulation of solid waste or shift the control of the disposal of such waste from the States to the Agency.

EPA first notes that this comment is not timely. Two Alaska State agencies (the Departments of Environmental Conservation and Transportation and Public Facilities) and the Alaska State legislature submitted comments on the proposed MSWLF Criteria, but none of the comments challenged the Agency's authority to promulgate self-implementing regulations under RCRA. Contrary to Alaska's assertion, EPA did raise for public comment the issue of how the Criteria would be implemented in States that do not have approved permit programs. 53 FR 33383 (Aug. 30, 1988). Many of the proposed standards were self-implementing in that they could be implemented directly by an owner or operator without State oversight. 53 FR 33382 (Aug. 30, 1988). Because it did not comment on the ''self-implementing'' issue or file a petition for review of the MSWLF Criteria, Alaska may not now challenge EPA's authority to promulgate self-implementing regulations under RCRA Subtitle D. *See* 42 U.S.C. 6976(a)(1); *Sierra Club* v. *EPA*, 992 F.2d 337, 342 n. 5 (D.C. Cir. 1993).

EPA also disagrees with Alaska's substantive comment that the Agency does not have the authority to promulgate self-implementing criteria under RCRA Subtitle D. While EPA agrees with Alaska that the implementation and administration of solid waste disposal is mainly a state-lead function, RCRA Subtitle D provides the Agency with the statutory authority to promulgate criteria for such disposal.

RCRA section 4004(a) authorizes EPA to promulgate regulations containing criteria that distinguish between those facilities classified as sanitary landfills and those which are open dumps. These regulations, found in 40 CFR part 257, are more than ''definitional'' as suggested by Alaska. They establish criteria, enforceable under RCRA section 7002(a)(1), to ensure that there is ''no reasonable probability of adverse effects on health or the environment'' from disposal of solid waste. 42 U.S.C. 6944(a). In enacting the Hazardous and Solid Waste Amendments of 1984, Congress made it clear that the prohibitions contained in the open dumping criteria promulgated pursuant to RCRA section 4004(a) were a ''direct Federal requirement, not dependent on the approval of a state plan * * *'' S. Rep. No. 248, 98th Cong., 2d Sess., at 50 (1984).

In addition, RCRA section 4010(c) requires EPA to ''promulgate revisions'' of the open dumping criteria for certain solid waste disposal facilities ''to protect human health and the environment,'' and specifies certain minimum elements to be included in those criteria. 42 USC 6949a(c). By using the word ''promulgate,'' which Webster's defines to mean ''to put (a law) into action or force,'' (Webster's New Collegiate Dictionary, at 914 (1979)), EPA believes that Congress intended the Criteria contained in 40 CFR part 258 to have the force and effect of binding regulations. While states are to play a central role in the implementation of the Criteria by adopting permit programs under RCRA section 4005(c)(1)(B), *Sierra Club* v. *EPA*, 992 F.2d 337, 339 (D.C. Cir. 1993), such state programs must meet the statutory standard of ensuring that each facility receiving hazardous household waste or conditionally exempt small quantity generator hazardous waste will comply with the Criteria promulgated by EPA.

As fully explained by EPA at the time it promulgated the Criteria under RCRA section 4010(c), the Agency chose a self-implementing approach out of a concern that States may not have the resources available to adopt adequate permit programs within the eighteen month time period provided by the statute (RCRA section 4005(c)(1)(B)). 56 FR 50978, 50991–93 (Oct. 9, 1991). A number of states had submitted comments outlining this concern. *Id.* at 50992.

EPA was also concerned about the appropriate implementation and enforcement of the Criteria in those states that did not adopt an adequate permit program under RCRA section 4005(c)(1)(B). *Id.* at 50993. For example, EPA had proposed that new MSWLFs would need to be constructed in accordance with a design goal (which would have to fall within a risk-based performance range) established by the relevant state. 53 FR 33314, 33410 (Aug. 30, 1988). In response to a number of comments from states that argued that they did not have the resources to establish such design goals or to review design plans to determine whether they met a certain risk range performance standard, EPA decided to promulgate a design requirement that both (1) established a uniform design requirement that could be implemented by owners and operators in unapproved states and (2) allowed approved states to authorize an alternative design which met a performance standard. 56 FR 51058–60 (Oct. 9, 1991). By establishing self-implementing performance standards for design and other requirements contained in the MSWLF Criteria, EPA could ensure that there would be protective implementation of the Criteria in states or in Indian country without approved programs where state or tribal oversight of a landfill design would not be present. *Id.*

Contrary to Alaska's comment, EPA believes that adopting a self-implementing approach in the Criteria is within the statutory authority provided by RCRA Subtitle D. Clearly, by enacting RCRA section 4010(c), Congress was expressing a concern

about the risks to human health and the environment posed by solid waste disposal facilities which receive hazardous waste. H.R. Conf. Rept. 2867, 98th Cong., 2d Sess., at 117 (1984) (''environmental and health problems caused by RCRA Subtitle D facilities are becoming increasingly serious and widespread''). While Congress mandated that the EPA revise the open dumping criteria, Congress did not specify the exact scope of the revised Federal Criteria or the manner by which they would be implemented in states without approved programs. Thus, it was left to EPA's discretion to implement section 4010(c) in a manner that would effectuate the statutory goals and policies reflected in the language of RCRA, including the Hazardous and Solid Waste Amendments (HSWA).

One comment asserted that EPA may only determine the inadequacy of a state program in the context of filing its own enforcement action under section 4005(c)(2). The basis of this assertion is unclear, because section 4005(c)(1)(C) is clear that EPA is to make a determination of the adequacy of each state program, and that EPA may make such a determination in the context of approval or disapproval of a state solid waste plan—not necessarily in the context of an enforcement action. Section 4005(c)(2)(A) separately gives EPA the discretion to enforce the Criteria where EPA has determined that an adequate program is not in place. The commenter's reading would suggest that the adequacy of state programs will be determined only in enforcement actions. This reading would make any EPA determination under section 4005(c)(1)(C), and the section itself, superfluous.

The commenter further asserted that any finding of inadequacy can only be met by EPA taking an enforcement action against the owner or operator under RCRA sections 3007 or 3008. The comment implies that if EPA determines that a state program is inadequate, the Agency cannot grant solid waste management jurisdiction to a tribe within the state. However, EPA's authority to determine the adequacy of a tribal solid waste program is not predicated on determining that the state regulatory program is inadequate. As discussed above, EPA's authority to approve tribal programs is predicated on established principles of federal Indian law, the holding in *Chevron,* and EPA's Indian Policy.

It is clear that section 4005(c) of RCRA required states to develop permit programs and gave EPA the authority to evaluate state programs. Tribes are sovereign governments with civil authority over Indian country that is comparable to the civil regulatory authority of states outside of Indian country. Thus, EPA continues to believe it is a reasonable interpretation of this section and RCRA Subtitle D more generally for tribes to have the opportunity to apply for approval from EPA to run their own programs.

9. EPA Has the Authority To Approve Tribal MSWLF Programs on a Case-by-Case Basis

EPA also received comments suggesting that EPA's notice announcing its tentative determination to approve the Campo Band's application did not comply with the requirements of the Administrative Procedure Act (APA). One commenter argued that EPA cannot approve individual tribal programs until it promulgates a rule which specifies the criteria and procedures for approval. This commenter noted that other environmental statutes which provide authority for EPA to treat tribes in the same manner as states require EPA to promulgate regulations to implement the tribal program. EPA disagrees that it must promulgate regulations as a precondition of approving tribal programs. As with state MSWLF permit programs, EPA believes that Congress has provided adequate authority to approve tribal programs under section 4005(c) of RCRA based on the statutory criteria contained therein. Congress did not specifically require that EPA issue a rule specifying criteria and procedures for approval of state programs, and EPA maintains inherent authority to make such determinations on a case-by-case basis.

The commenter also argued that a rule is necessary before approving any tribal program because otherwise there would be no standards for assuring the reasonableness of treating tribes in the same manner as states for purposes of RCRA Subtitle D, as there are under other environmental statutes which specify an explicit role for tribes. Another commenter asserted that EPA lacks standards for approval of tribal or state programs, and that, if Congress were to amend RCRA to allow for treatment of tribes in the same manner as states, it would likely require EPA to promulgate regulations for such treatment. EPA disagrees that standards are lacking. RCRA section 5004(c)(1)(B) requires states to adopt and implement ''a permit program or other system of prior approval and conditions to assure that each solid waste management facility will * * * comply'' with the Federal Criteria in 40 CFR part 258. 42 U.S.C. 6945(c)(1)(B). RCRA section 7004(b)(1) states that ''public participation in the development, revision, implementation and enforcement of any regulation * * * or program shall be provided for, encouraged, and assisted by the Administrator and the States.'' 42 U.S.C. 6974(b)(1). As EPA explained in the tentative determination, the Agency interprets this statutory requirement to impose the following standards on state and tribal programs: tribes and states must (1) have enforceable standards for new and existing MSWLFs that are technically comparable to the Federal Criteria in 40 CFR part 258; (2) have authority to issue a permit or other notice of prior approval to all new and existing MSWLFs within their jurisdiction; (3) provide for public participation in permit issuance and enforcement; and (4) show sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program. EPA has determined that the Campo Band's solid waste permitting program meets these requirements. 59 FR 24422, 24423 (May 11, 1994).

In addition, as explained in the tentative determination, EPA has requested tribes to demonstrate that they are federally recognized, have a government exercising substantial governmental duties and powers, have the capability to operate a program, and have adequate civil regulatory authority to do so. These are the criteria Congress incorporated into the Clean Air Act, Clean Water Act, and Safe Drinking Water Act provisions that allow EPA to treat tribes in the same manner as states. EPA has determined that the Campo Band's program meets these requirements. 59 FR 24422, 24423 (May 11, 1994). In fact, on May 11, 1992, EPA approved the Campo Band's application for treatment as a state under Clean Water Act (CWA) section 518(e) for the purposes of CWA section 106. On September 28, 1993, EPA approved the Campo Band's application for treatment as a state under Clean Water Act section 518(e) for the purposes of CWA section 319.

Alaska argued that EPA's tentative determination to approve the Campo Band program constitutes a proposed rule under the Administrative Procedures Act (APA) since, in Alaska's opinion, the preamble establishes the general standard that Alaska Native Villages are eligible to submit MSWLF permit programs for approval. Among other things, Alaska criticizes as misleading EPA's placement of such a substantive rule in the ''Notices'' section of the **Federal Register,** rather than the

''Proposed Rules'' section. Alaska also asserted that EPA has violated the Freedom of Information Act (FOIA) requirement to ''separately state and currently publish * * * substantive rules'' by ''*de facto*'' promulgation of the STIR in the same notice in which the Agency determines the adequacy of the Campo Band's program. EPA disagrees with Alaska's characterization of the tentative determination. EPA acknowledges that the preamble to the tentative determination makes reference to EPA's policy that ''Alaska Native entities * * * may apply for permit program approval.'' 59 FR 24422, 24426 (May 11, 1994). It is clear from the context of the discussion, however, that EPA was not trying to propose a rule with respect to Alaska Natives, but merely was observing that RCRA does not expressly preclude Alaska Native Villages from applying for program approval. EPA has not proposed to approve any Native Village program and, although the tentative determination may have been ambiguous on this point, the Agency has not determined that any village would necessarily satisfy the requirements for program approval. The determination whether any Alaska Native Village will qualify to operate a MSWLF permitting program will be made when such application, if any, is submitted. Thus, the statement in EPA's tentative determination does not give rights that Alaska Natives did not previously hold, nor does it purport to divest the State of Alaska of any authority it may have to regulate MSWLFs in Native Villages. The tentative determination and today's action are intended to affect only the Campo Band. In addition, EPA does not hereby purport to adopt the STIR; discussions of tribal jurisdiction in both the tentative determination and today's action are included for the purpose of explaining EPA's determination of the adequacy of the Campo Band's program. If and when EPA proposes the STIR and/or proposes to approve a Native Village program, as discussed above, Alaska may raise its jurisdictional and other concerns at that time and EPA will give them due consideration.

One commenter stated that Congress never intended to have EPA delegate the authority to regulate municipal solid waste landfills to every or any Indian tribe in the nation, because the burden on EPA would be overwhelming. The same commenter suggested that EPA should retain authority over Indian country. Alternatively, the commenter suggested that EPA delegate this authority to states. EPA notes that EPA permitting and enforcement of solid waste management in Indian country could result in a far greater burden on the Agency than determination of the adequacy of tribal programs. More importantly, under Subtitle D of RCRA, EPA has no authority to enforce the Federal Criteria, unless it determines that the applicable program is inadequate, in which case EPA would have discretion to take enforcement actions for violations of RCRA (RCRA section 4005(c)(2)(A)). Therefore, EPA cannot ''delegate'' authority to states or tribes. EPA's role, as prescribed by Congress, is limited to determining whether the solid waste programs adopted by states or tribes are adequate to assure compliance with the federal regulations (RCRA section 4005(c)(1)(C).) Finally, as discussed above, under federal law EPA does not have the power to give states jurisdiction over Indian country.

One commenter stated that the best interest of the people and environmental laws are met by consistent yet flexible regulations covering municipal solid waste landfills. This commenter expressed concern that allowing hundreds of tribes to regulate solid waste will result in inconsistency. As the comment itself noted, flexibility as well as consistency is important in protecting human health and the environment. Congress required EPA to set minimum standards for landfills, and required states to adopt and implement permit programs which would assure compliance with the federal standards. Both RCRA and the federal regulations take into account the history of local regulation of solid waste and the need to have solid waste requirements be flexible enough to accommodate local needs. EPA will not approve a state or tribal program unless it is adequate to ensure that all MSWLFs within the state's or tribe's jurisdiction will comply with the Criteria in 40 CFR part 258. Therefore, EPA believes that approval of tribal solid waste programs will not result in any inconsistency that would violate the requirements of 40 CFR part 258. It is possible, however, that owners or operators of landfills in more than one jurisdiction may have to meet different requirements in different jurisdictions. This was the case prior to the federal requirements, which merely set new national minimum standards for landfills.

One commenter questioned EPA's motives and its purpose in providing a program adequacy ruling. RCRA itself establishes EPA's role. Section 4005(c)(1)(C) provides that ''[t]he Administrator shall determine whether each state has developed an adequate program''. Congress mandated that EPA determine the adequacy of state programs. EPA's motive and purpose in providing a program adequacy determination for tribal solid waste programs are the same as for providing such a determination for state programs: to ensure that the appropriate government entity is ensuring the proper management of solid waste within its jurisdiction. As discussed above, EPA's approval of tribal solid waste programs is consistent with federal Indian law and EPA's Indian Policy.

One commenter stated that non-tribal regulation of the land on which a proposed landfill would be situated is critical because contaminated groundwater could migrate off the Reservation. In support of this position, the commenter quoted from the **Federal Register** notice in which EPA published its tentative approval of the Campo Band's program. In the tentative determination, EPA stated that where groundwater can migrate, ''it would be practically very difficult to separate out the effects of solid waste disposal on non-Indian fee land within a reservation from those on Tribal portions''. 59 FR 24422, 24425–26 (May 11, 1994). The quoted statement supports tribes' assertions of jurisdiction to regulate solid waste management on non-Indian fee land within a reservation. As discussed above, EPA does not have authority to grant states jurisdiction over Indian country; in fact, federal law limits the jurisdiction of states over Indian country. The Campo Reservation is entirely tribal trust land.

One commenter stated that none of the statutory sections cited by EPA in the tentative determination provides authority for EPA's action of approving the Campo Band's program. The comment questioned the appropriate forum for judicial challenges to EPA's action. The statutory sections—RCRA sections 2002, 4005 and 4010—authorize promulgation of regulations and provision of technical assistance and provide for review and approval of state programs. Although all three of these statutory sections support EPA's action today, EPA has the authority to approve tribal programs under RCRA section 4005 using its discretion to fill gaps pursuant to *Chevron*. The appropriate forum for such judicial challenges is ultimately a decision for a court. However, EPA currently believes that the appropriate forum may be the U.S. Court of Appeals for the District of Columbia Circuit, pursuant to RCRA section 7006(a), 42 U.S.C. 6976(a).

B. Treating the Campo Band as a State

One commenter suggested that ''soliciting a waste stream from several hundred thousand non-tribal members can hardly be viewed as self-government * * *.''. EPA agrees that importation of waste does not equate to self-government. However, the Campo Band does not rely on the fact that it will receive waste from off-Reservation to establish that it is self-governing. The Campo Band's application amply demonstrates that the tribe has a government exercising substantial governmental duties and powers. Nothing in RCRA, the Federal Criteria, or the draft STIR would preclude a state or tribe from implementing a municipal solid waste permitting program which includes imported waste, as long as the state or tribal program ensures that the MSWLFs within its jurisdiction will comply with the Federal Criteria in 40 CFR part 258.

One commenter asked whether the Campo Band has state status, what gives them the right to form their own EPA, and whether they are no longer California residents if they don't have to follow California law. The Campo Band is a federally recognized Indian tribe—a sovereign entity within the United States. Federal courts have affirmed the sovereign status of Indian tribes in numerous judicial decisions which have uniformly held that tribal governments retain many sovereign powers, despite the fact that Indian tribes and tribal territories have been incorporated into the United States. *See Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832); and *United States* v. *Mazurie*, 419 U.S. 544 (1975). As such, tribes may form their own governmental entities to regulate their members and activities on land within their jurisdiction. This includes the authority to form and administer their own environmental regulatory programs. Activities in Indian country are generally not subject to state law (see discussion under Category A above). Nonetheless, under the Indian Citizenship Act of 1924, 8 U.S.C. 1401(a)(2), and the 14th Amendment to the U.S. Constitution, any member of a tribe born in the United States is a citizen of the United States and of the state where he or she resides.

Two commenters asked whether the Campo Band had the constitutional authority to be treated as a state. Both the U.S. Constitution and the Campo Band's Constitution provide authority for today's decision. Under the U.S. Constitution, tribes are sovereign entities with power over their lands and members, and the U.S. Congress is delegated the power to regulate commerce with the tribes. U.S. Constitution, Article I, section 8, paragraph 3. Congress has exercised this authority by determining that EPA may treat tribes in the same manner as states for certain purposes under several environmental statutes, including, for example, the Clean Water Act section 518, 33 U.S.C. 1377. It is important to note that today's action does not make the Campo Band a state, or grant any rights to members of the Campo Band that they did not otherwise possess, or divest the State of California of any rights it might have with respect to the Campo Band. Today's action simply states that EPA has determined that, for purposes of RCRA Subtitle D, the Agency treated the Campo Band's application for solid waste program approval in the same manner as it would treat such an application from a state, and found it to be adequate.

One commenter supported EPA's position, stating that ''the Federal Constitution strongly supports the conclusion that, as a general rule, Indian tribes that constitute sovereign governments are not subject to state solid waste management requirements'', and that the Supreme Court ''has repeatedly held that tribes are sovereign entities that 'retain attributes of sovereignty akin to those possessed by other governmental bodies; that is, power over people and territory' ''.

The Campo Band's Constitution establishes the Campo General Council and empowers it to govern the affairs of the Tribe. Constitution of the Campo Band of Mission Indians, Article IV. Pursuant to this power, the General Council passed several Resolutions establishing the Campo Environmental Protection Agency (Resolution 88–005), enacting the Campo Band of Mission Indians Environmental Policy Act of 1990 and the Solid Waste Management Code of 1990 (Resolution 90–0019).

C. Off-Reservation Voice in Tribal Politics, Fair Hearings

Commenters expressed concern that, despite the possibility of negative environmental impacts to them, the Campo Band's neighbors have no voice in tribal politics, cannot vote tribal officials out of office, and may not receive a fair hearing in the Campo Band's Environmental Court when actions against the landfill would negatively affect tribal income.

EPA agrees that citizens should have a voice in the regulation of the environment. Neighbors of the Campo Reservation have several avenues for voicing their concerns regarding solid waste practices on the Reservation. The Campo Band has adopted laws requiring that CEPA take specific actions in response to complaints from any person, and allowing any person adversely affected by CEPA's actions to challenge CEPA in the Campo Environmental Court. *See* V Campo Tribal Regulations (C.T.R.) 590.02, 590.10, and I C.T.R. 150.02.

The fact that off-Reservation neighbors cannot vote in tribal elections is analogous to California residents who live near a landfill in another state in which they cannot vote. EPA cannot require as a prerequisite for program approval that a state or tribe allow non-residents to vote in that state's or tribe's elections. EPA believes that the procedures adopted by the Campo Band ensure that the Tribe will consider and respond to concerns of off-Reservation neighbors. In addition, the citizen suit provision of RCRA, which authorizes lawsuits in federal District Court, is still available after EPA has approved a state or tribal program.

One commenter stated that a common requirement of state program approval includes administrative or judicial review procedures, and the commenter alleges that the Campo Band expressly disclaimed any ability by nontribal members to seek judicial review of Campo Band actions. The commenter doesn't indicate where the Campo Band made such a disclaimer. However, as discussed above, the Campo Band's program does allow nontribal members to seek judicial review of Campo Band actions. The Campo Band has explicitly waived sovereign immunity for purposes of such challenges to CEPA actions in section 302 of the Campo Environmental Policy Act.

D. Sole Source Aquifer

A number of commenters noted that the Campo/Cottonwood Creek aquifer is the sole source of drinking water available to local communities in the United States and Mexico, alternative water sources would be expensive or unavailable, and EPA has designated the Campo/Cottonwood Creek aquifer a sole source aquifer under section 1424(e) of the Safe Drinking Water Act (SDWA). Commenters suggested that because a proposed landfill will be located near a sole source aquifer, EPA should disapprove the Campo Band's regulatory program.

EPA agrees that protection of groundwater resources and sole source aquifers is of utmost importance. However, EPA cannot disapprove a state or tribal regulatory program because a sole source aquifer exists within its jurisdiction. Under provisions of section 1424(e) of the SDWA, 42 U.S.C. 300h–3(e), the EPA Regional Administrator

granted a petition for designation of a Campo/Cottonwood Creek Sole Source Aquifer (SSA) on May 5, 1993. Notice of the designation was published in the **Federal Register** on May 28, 1993 (58 FR 31024). The petition was submitted for a 400-square mile area along the U.S./Mexico border in the vicinity of Campo, California.

Under section 1424(e) of the SDWA, once an area has been designated a SSA:

> No commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health* * *

''Federal financial assistance'' is defined in 40 CFR 149.101(g). Examples of projects include sewage treatment plants, funded in part by federal grant monies, and housing projects receiving federal loans. Neither EPA's approval of the Campo Band's solid waste program nor the proposed landfill meet the definition of a federal financially assisted project. Thus, the SDWA would not prohibit either the proposed landfill or program approval.

In reviewing state and tribal regulatory programs, EPA determines whether the programs will ensure compliance with EPA's landfill regulations in 40 CFR part 258. EPA believes that the Campo Band's landfill regulations, including its groundwater monitoring and corrective action regulations, will ensure compliance with the exacting groundwater monitoring and corrective action requirements contained in EPA's 40 CFR part 258 regulations. EPA also believes that the Campo Band's regulations will ensure compliance with 40 CFR 258.3 which requires owners and operators to comply with all other applicable federal rules, laws, regulations, or other requirements.

One commenter was concerned that there is no proposed mitigation if the groundwater supply is contaminated. Mitigation measures for individual landfills within the jurisdiction of a state or tribal program are not required or used as a basis for program decisions by EPA. However, EPA's 40 CFR part 258 requirements and the Campo Band's regulations contain strict standards for groundwater monitoring, corrective action and financial assurance. EPA believes protection of groundwater resources is of utmost importance. It is the responsibility of the Campo Band to ensure that landfills on the Reservation comply with its regulations and permits.

One commenter asked if the Campo Band takes over operations of the proposed landfill, will they qualify for federal funding and will the landfill then fall under the definition of a federal financially assisted project. This comment would require EPA to speculate without any information about the legal or factual circumstances under which the Campo Band might apply for federal financial assistance. EPA cannot at this time make a determination as to whether the Campo Band would seek or qualify for financial assistance, whether the landfill would be a federal financially assisted project, or about the applicability of section 1424(e) of the SDWA to such potential future financial assistance.

E. United States-Mexico Border Issues

A number of commenters expressed concern about the potential environmental and economic impacts of the proposed landfill on the people and communities in Mexico. Commenters stated that the proposed landfill poses risks to the rights of the Mexican border communities to be free from threats to their health and natural resources. Specifically, commenters raised siting concerns related to EPA's responsibilities under Executive Order 12114 (E.O. 12114), entitled ''Environmental Effects Abroad Of Major Federal Actions'', and the Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement).

E.O. 12114 calls for environmental assessment of major federal actions having significant effects on the environment outside the borders of the United States. EPA does not believe that approval of the Campo Band's regulatory program is a major action which will have significant environmental effects outside of the United States. As noted above, EPA's decision regarding the adequacy of the Campo Band's regulatory program is not a ruling on any landfill which might be proposed under their regulatory program. EPA notes that approval of state and tribal regulatory programs is not among the activities to which environmental review requirements apply under EPA's rules for implementing the Executive Order. 40 CFR 6.1002.

40 CFR 6.1002 states that review requirements apply to major permitting or licensing by EPA of facilities which affect the global commons or the environment of a foreign nation, including permitting under the Clean Air Act. 40 CFR 6.1004(c) provides that the information required to be submitted by the permit applicant satisfies the requirements of E.O. 12114. EPA agrees that assessment and consideration of the transboundary impacts of sites in the border zone are extremely important. EPA has maintained open communications with Mexico regarding the proposed landfill and the regulatory program approval process. In June 1992, the Hazardous Waste Work Group, established under the La Paz Agreement, formally adopted a ''Consultative Mechanism for Exchange of Information Between the United States and Mexico on Facility Siting.'' This consultative mechanism, although it is not legally binding, sets forth the intent of the United States and Mexican governments to notify each other of waste sites proposed for construction in the border area of their respective countries. The consultative mechanism was approved by the National Coordinators of the La Paz Agreement in 1992, and forms the basis upon which EPA has continued to inform counterpart officials in Mexico of developments regarding the proposed Campo municipal solid waste landfill. EPA has made every effort to provide Mexican officials with information on the proposed site and take their concerns about this matter into consideration.

The Binational Hazardous Waste Work Group, as established under the 1983 La Paz Agreement, is the forum through which the United States continues to notify and inform the government of Mexico of waste disposal sites proposed to be constructed within the border area of the United States which are subject to U.S. environmental regulatory review, and which might have a transboundary impact in the Mexico border zone. The Work Group is also the main forum for bilateral discussions of such proposed sites. These notifications, the provision of information by the United States to Mexico, and the nature of the discussions that take place at the Work Group meetings are reported to both governments at annual meetings of the National Coordinators, as specified in the La Paz Agreement. Moreover, the government of Mexico and its citizens were encouraged to participate in the public hearing as part of EPA's review process for approval of the Campo Band's regulatory program. EPA has sent Mexico extensive information on the proposed landfill and on EPA's actions related to the proposed landfill.

In the interest of furthering our efforts to communicate fully with Mexico on this site, EPA coordinated a meeting between U.S., Mexican and Campo Band government agencies on July 1, 1994. The purpose of that meeting was to share information on the roles and

authorities of the different agencies involved in regulating and permitting the proposed landfill. EPA will keep the appropriate Mexican officials fully informed on EPA's actions concerning the Campo Band's program and the proposed landfill.

In addition, CEPA has maintained open communications with the Government of Mexico with regard to the proposed landfill. EPA has encouraged CEPA to continue to respond to the Mexican government's concerns directly in the spirit of open communication.

In sum, EPA believes that the appropriate forums for raising concerns regarding the siting of the proposed landfill are the Binational Hazardous Waste Work Group, the National Environmental Policy Act (NEPA) process and CEPA's permitting process. With respect to potential environmental and economic impacts to Mexico and the U.S., comments have been responded to in Category K below.

F. Capability of the Campo Band

A number of commenters suggested that the Campo Band and the Campo Environmental Protection Agency lack regulatory and enforcement history and ability and, in some cases, selectively enforce regulations. Commenters suggested that CEPA does not have the ability or willingness to enforce its regulations. Some commenters suggested that EPA should deny the Campo Band's program, reconsider the Campo Band's application for approval of its regulatory program after a track record has been established, and supervise the Campo Band. One commenter stated that the Campo Band has no education or experience in the solid waste arena. One commenter stated that it would be wrong to approve the program of such a small organization. EPA also received comments stating that CEPA and the Campo people are independent, capable, and concerned about protecting their environment and water. Commenters stated that the Campo Band's regulatory program is second to none.

EPA believes that the Campo Band's program meets or exceeds federal standards and that the Campo Band is capable of managing its regulatory program. The Campo Band has shown that it has jurisdiction and its staff resources are adequate to manage its solid waste permitting program. The Campo Band's application shows that CEPA devotes over three full-time positions to landfill permitting, monitoring and enforcement. The Campo Band also has contracts with firms providing personnel with legal and technical expertise.

In addition to demonstrating that its staff resources are adequate, the Campo Band's application demonstrates that it has management and technical skills. CEPA employs individuals with years of environmental regulatory experience and degrees in engineering and geology. The Campo Band application also demonstrates that the Campo Band has entities that exercise executive (Executive Committee), legislative (General Council) and judicial (Campo Environmental Court) functions. The Campo Band has also demonstrated experience in implementing public health and environmental programs. The Campo Band has adopted codes, ordinances or regulations governing land use planning, housing, gaming and solid waste. CEPA has monitored development of the proposed landfill on the Reservation and has worked closely with the State of California to ensure that solid waste activities on the Reservation will comply with California law. Finally, the Campo Band has demonstrated independence between tribal regulatory entities and regulated entities.

EPA notes that prior solid waste regulatory history is not a requirement for EPA approval of a solid waste permitting program. The fact that Congress gave states 180 days after adoption of federal landfill standards to adopt and implement programs ensuring compliance with those standards indicates that Congress anticipated that states (and tribes) may not have had such programs in place before the federal standards were promulgated. EPA believes that tribes are fundamentally able to regulate the environment in the same manner as states, and notes that states have a variety of levels of experience in environmental regulation. The ability to adopt and implement environmental laws varies widely from state to state and tribe to tribe. EPA evaluates each state and tribe individually to determine whether it has adopted, and is capable of enforcing, a solid waste program that is adequate to assure compliance with the federal regulations. Some states have not demonstrated a history of adopting or enforcing solid waste requirements prior to applying to EPA for program approval under RCRA Subtitle D. EPA is taking today's action because the Agency has determined that the Campo Band's program is adequate to assure compliance with the federal regulations. The Tribe not only has permitting authority, technical standards, public participation procedures and enforcement authority that meet or exceed the federal standards, but also the staff, resources and technical expertise available to implement and enforce the program.

Some commenters specifically stated that CEPA has not enforced its regulations in cases of auto crushing, septic systems, tire burial and litter control. EPA wishes to clarify that review and approval of the Campo Band's program is related solely to the Campo Band's landfill permitting and enforcement program. Regulation of car crushing, septic systems, tire burial and litter are not covered by this action and are not legal grounds for denial of a solid waste regulatory program. EPA suggests that commenters concerned about these activities raise their concerns with CEPA and/or other appropriate tribal or federal agencies. Further information regarding hazardous waste concerns involving car crushing is provided below.

One commenter expressed concern that no matter how good regulations are, they can't prevent pollution, it is difficult to enforce them—that most people don't have the time, energy and money to bring citizen suits—and that it is difficult to clean up contaminated groundwater.

EPA understands that regulations are only as good as the ability to enforce them. EPA's regulations are designed to minimize environmental and health impacts from landfills. Congress did not give EPA authority to oversee directly the operations of landfills. Therefore, approving adequate state and tribal programs to regulate landfills is the best way to ensure that the regulations are enforced. EPA believes that the Campo Band's program meets or exceeds federal standards and that the Tribe has demonstrated interest in appropriately regulating facilities under its jurisdiction.

Finally, if CEPA is unable, for whatever reason, to enforce the program requirements, and the proposed landfill fails to comply with the Federal Criteria, RCRA section 7002 allows any person to sue the owner or operator of the landfill. In addition, withdrawal of program approval may be initiated where it appears that a state or tribal permit program may no longer be adequate to ensure compliance with the RCRA Subtitle D Federal Criteria. Section 239.13 of the draft STIR specifies conditions and procedures which would be used by EPA as guidance for withdrawal of adequacy determinations.

G. Conflicts of Interest

Several commenters raised concerns that the Campo Band may have potential conflicts of interest in

regulating a proposed landfill that will provide income for the Tribe. These issues are discussed below.

First, however, it is important to explain that nothing in Subtitle D of RCRA requires that EPA consider conflict of interest in determining the adequacy of a state or tribal solid waste permitting program. There is language in the preamble to the draft STIR that addresses conflicts of interest, but it merely encourages states and tribes to work with local agencies and provide oversight to prevent problems such as local conflicts of interest. The preamble also incorporates the criteria used in other environmental statutes to evaluate whether to treat tribes in the same manner as states. These requirements are that a tribe: (1) Be federally recognized, (2) have a government exercising substantial powers, (3) have jurisdiction over the parties and the subject matter to be regulated, and (4) be reasonably expected to be capable of managing the program. The capability requirement is not defined or discussed in the draft STIR. However, where EPA has adopted regulations addressing this ''capability'' requirement in other statutes, the Agency has considered whether the tribe has demonstrated ''sufficient independence'' of the regulated and regulatory entities of the tribe ''to assure effective and fair administration of the program.'' 40 CFR 123.31, 58 FR 67981 (December 22, 1993). EPA believes that the Campo Band has met these standards.

The proposed Campo landfill will not be operated and regulated by the same tribal entity. The operator of the proposed landfill will not be CEPA, but a private, non-tribal company. Muht-Hei, Inc., the tribal business entity, is a separate tribal entity from CEPA. The Campo Band's regulations define Muht-Hei, Inc. as the operator of any solid waste facility on the Reservation. This situation is analogous to a privately operated landfill owned by one state agency and regulated by another.

One commenter stated that the Campo Band should have conflict of interest codes for tribal office holders and board members, similar to those in California's Government Code sections 87300, 87302 and Public Resources Code (PRC) sections 43207, 40402 and 40709.5. The comment asserted that the Campo Band could not meet the standards set by these provisions.

Although not required by RCRA, the Federal Criteria in 40 CFR Part 258 or the draft STIR, the Campo Band has adopted regulations governing conflicts of interest.[3] For example, the Campo Band has adopted a regulation governing conflicts of interest on the part of the CEPA Board of Commissioners. This regulation provides that:

> A member of the Board may not participate in decisions relating to the governance and management of CEPA if the member has a direct financial interest in the person or activity being regulated. Tribal membership does not preclude participation in decisions involving activities on or relating to property owned by the Band.

I C.T.R. 110.10. A similar provision for judges on the Campo Environmental Court is set forth in I C.T.R. 150.09(e). Campo law also prohibits bribery, threats, or other efforts ''to obstruct or impede the activities of CEPA or the Board'', or to ''commit fraud * * * with the intent to evade or defeat Tribal environmental codes or regulations,'' III Campo Environmental Policy Act 303(a).

EPA believes that the Campo Band has taken steps to prevent conflict of interest through adoption of I C.T.R. 110.10, 150.09(e), and III Campo Environmental Policy Act 303(a), quoted above. EPA also believes that the Tribe is not ''regulating itself'', because the actual operator of the landfill, Mid-American Waste Systems, Inc., is not a tribal entity, and CEPA and Muht-Hei are ''sufficiently independent to assure effective and fair administration of the program.'' 40 CFR 123.31, 58 FR 67981 (December 22, 1993). The Tribe has also adopted provisions allowing anyone (including non-members) to challenge CEPA in the Campo Environmental Court. *See* III Campo Environmental Policy Act 302, I C.T.R. 150.02.

Several commenters expressed concern that the Campo Band has a conflict of interest because it has received and will continue to receive revenues from the operator of the landfill, and would therefore not enforce costly requirements that could reduce tribal income. One commenter suggested that this conflict is particularly acute because adverse impacts of the proposed landfill may be more serious outside the Reservation. Commenters felt CEPA did not have the incentive, objectivity or willingness to enforce the solid waste requirements. One commenter asked what incentive there is for tribal authorities not to accept gifts that can influence decisions. Another commenter suggested that approving the Campo Band's program would be like ''the fox guarding the chicken house'', whereas states have demonstrated ability to enforce environmental regulation over many decades. One commenter suggested that the Tribal Chairman had prematurely approved the landfill permit to operate by stating that the landfill will open in June 1995. In contrast, one commenter stated that it is not true that the economic opportunity of a landfill is more important to tribal members than environmental protection of the land.

EPA disagrees that the Campo Band does not have the incentive, objectivity or willingness to enforce the solid waste requirements. The Campo Band has adopted landfill liner design and release detection regulations which are more stringent—and more costly to implement—than the federal or California requirements, and which are beyond those needed to obtain EPA approval. This indicates that the Campo Band is willing to take steps to protect human health and the environment despite the fact that such steps will cost money and potentially reduce revenues from the proposed landfill. In addition, CEPA makes decisions on applications for landfill permits in accordance with its regulations, after notice and an opportunity for public comment, regardless of statements by the Tribal Chairman.

H. Adequacy of the Campo Band's Resources

A number of commenters expressed concern that ''there is a shortage of funds in the backcountry which would not provide the adequate supervision this would need'' and CEPA has inadequate resources to implement or enforce a regulatory program. Commenters asserted that Mid-American Waste Systems, Inc., the proposed landfill operator, is having financial problems and asked where the Campo Band will get resources to fund its program if Mid-American Waste Systems, Inc. fails to provide adequate resources.

The Campo Band addressed resources in its narrative description of the application for program approval. EPA found the Campo Band's narrative description, including its staff resource description, adequate. EPA does not require specific resource and staffing requirements because each state or tribe

[3] Other federal statutes contain statutory provisions establishing conflict of interest requirements for state programs. *See* Clean Water Act section 304(i)(2)(D), 33 U.S.C. 1314(i)(2)(D); Clean Air Act section 110(a)(2)(E)(ii), 42 U.S.C. 7410(a)(2)(E)(ii). For example, under Clean Water Act section 304(i), state programs must have a conflict provision similar to California PRC section 40402 to obtain EPA authorization. Nothing in RCRA, the Federal Criteria in 40 CFR part 258, or the draft STIR requires such a provision. Therefore, EPA has not required that any state or tribe establish conflict of interest codes in order to demonstrate that a solid waste program is adequate to assure compliance with the Federal Criteria.

has different resource requirements and strategies for ensuring compliance. EPA asks that states and tribes list the total number of regulated facilities within the state or tribe's jurisdiction in its application. This information is useful in assessing whether available resources are adequate to ensure compliance. The Campo Band's ratio of resources to the number of regulated facilities is higher than some state regulatory programs.

In determining whether a state or tribe's program will ensure compliance with the federal landfill regulations, EPA does not require that states and tribes provide financial information on where funding for programs is generated or on how secure that funding is. As discussed above, the Campo Band and other approved states and tribes are expected to sustain the regulatory program presented in their applications. Withdrawal of program approval may be initiated where it appears that the state or tribal permit program may no longer be adequate to ensure compliance with the RCRA Subtitle D Federal Criteria.

I. CEPA's Authority to Stop Harm to Off-Reservation

One commenter requested that section 205 of the Tribal Environmental Policy Act of 1990 (Act), which provides authority to issue restraining orders and injunctions, be amended to include protection of off-Reservation residents and environments.

Section 205(a)(2)(C) of the Act, as it read on the date EPA published its tentative determination, provided that emergency restraining orders could not be issued without notice to the adverse party unless immediate and irreparable injury, loss or damage would result to the Reservation residents or environment before notice could be served. Section 205(b)(2)(C) did not clearly provide for preliminary or permanent injunctions against acts that threatened the public health or safety or the environment off-Reservation. EPA discussed the concern raised by this comment with the Campo Band. In response, on December 11, 1994, the Campo Band General Council amended section 205 of the Act. That section now clearly provides for issuance of emergency restraining orders and injunctions against acts that threaten human health, safety or welfare or the environment, without distinguishing between on-Reservation and off-Reservation threats. A copy of the amended Act is available at EPA's office in San Francisco, at the Campo Environmental Protection Agency's office and at the public library in the town of Campo.

J. Campo Band Leadership and Membership

A number of commenters expressed concern regarding alleged corruption in the Campo Band. One commenter asserted that tribal officials are on their best behavior to obtain approval from regulatory agencies, but have not always acted responsibly. Commenters also asserted that tribal members intimidate off-reservation opponents to the landfill and that the Chairman of the Campo Band had illegally received payments from landfill project proponents. One commenter also stated that non-tribal members had voted on tribal issues at tribal meetings.

EPA does not believe these allegations should be considerations in EPA's final determination regarding the adequacy of the Campo Band's regulatory program. For the reasons described above, EPA believes that the Campo Band's solid waste regulatory program will ensure compliance with the federal regulatory requirements. The Campo Band created CEPA to regulate solid waste on the Reservation. CEPA has regulatory authorities that are separate from the authority of the Chairman of the Campo Band and from the authorities of the tribal council. EPA has been informed that appropriate federal agencies have been apprised of these allegations.

K. Landfill-Specific Issues

Many commenters expressed concern regarding the potential environmental impacts of the proposed landfill and the ability of the landfill owner/operator to comply with applicable regulations. These landfill-specific concerns included potential for contamination to groundwater which flows across the United States-Mexico border, ability to monitor and clean up or mitigate groundwater in a fractured bedrock setting, location of a landfill in a seismic impact zone, compliance with financial assurance requirements, strong winds, traffic problems; and general risks to the ecosystem, economy and property values of off-reservation residents, and to Mexican communities and citizens. A number of commenters noted that groundwater monitoring in the fractured bedrock setting has not been adequately addressed. One commenter expressed concern that the landfill site should be characterized before construction of the landfill, not during or after. Commenters expressed concern regarding importation of waste to a groundwater dependent area and asked about sources and types of waste to be sent to the landfill, life expectancy of the landfill, and recycling efforts. Commenters requested that EPA oppose the proposed facility and deny program approval because of landfill-specific concerns. Other commenters suggested that the landfill will be one of the safest landfills in the country, will provide economic support and jobs for the Tribe and will benefit other communities. Another commenter stated that the plan for the Muht-Hei facility is very detailed and well thought out.

EPA understands that there is tremendous controversy surrounding the proposed landfill. However, EPA does not make solid waste permitting decisions about individual landfills under the RCRA program. EPA's action today approves the Campo Band's solid waste regulatory program. This program approval means that EPA has reviewed the Campo Band's regulatory program, and has determined that it will ensure compliance with the Federal Criteria.

Concerns regarding the proposed landfill or the ability of the landfill to comply with applicable regulations should be raised with the agency responsible for ensuring compliance with those regulations. CEPA, the U.S. EPA, the Bureau of Indian Affairs (BIA) and the California Environmental Protection Agency (Cal EPA) all have roles with respect to the proposed landfill. It should be noted, however, that the U.S. EPA's permitting role is limited to permitting under the Clean Air Act.

One commenter stated that it will be adversely impacted by flaring, dust generation, truck haul activities, training, and water and light pollution from the landfill. Potential air pollution from flaring, dust generation and truck haul activities are issues that are being addressed through U.S. EPA's permitting under the Clean Air Act. With respect to the remaining concerns, EPA's action today is a determination that the Campo Band's solid waste permitting program is adequate to assure compliance with the federal regulations at 40 CFR part 258. A landfill may be constructed and operated without EPA approval of the state or tribal program in which the landfill is located, as long as it meets these federal requirements. EPA's regulations were designed to minimize negative environmental impacts from the management of municipal solid waste. However, Congress gave EPA no authority to enforce these requirements unless it finds that the landfill is in a state or within the jurisdiction of a tribe without an adequate permitting program. Because EPA has determined that the Campo Band's program is adequate, the appropriate agency to which concerns about the actual construction and operation of the

proposed landfill should be raised is the Campo Environmental Protection Agency.

One commenter stated that it is unacceptable for the Campo Band to pursue the landfill venture to the detriment of the neighboring communities. Another commenter stated that the majority of air quality and groundwater impacts from the proposed landfill will be off-Reservation, that the proposed landfill will be run by a non-Indian corporation with main offices over 1000 miles from the Reservation, and that the proposed landfill will be dependent on off-Reservation facilities such as materials recovery facilities (MRFs). At the same time, this commenter stated that the proposed project appears to be an example of ''the poisoning of Indian country''.

These issues do not directly affect the Agency's determination of the adequacy of the Campo Band's solid waste permitting program. Any landfill is likely to have positive and negative environmental and economic impacts on both the community in which the landfill is located and the surrounding communities. EPA's regulations were designed to minimize negative environmental impacts from landfills, and all landfills must comply with these regulations. However, landfills may be sited in Indian country regardless of whether EPA approves tribal solid waste programs. EPA's decision today is based upon the Campo Band's ability to ensure compliance with the 40 CFR part 258 regulations. EPA has determined that the Campo Band has a solid waste permitting program that is adequate to assure compliance with those regulations.

One commenter noted that U.S. EPA's comments on the environmental impact statement (EIS) for the proposed landfill identified serious concerns about ability to monitor adequately for groundwater contamination and stated that projects of this kind should not be sited over potable groundwater basins within fractured bedrock. Another commenter asked that EPA deny the lease for the proposed landfill.

BIA is required to approve any lease for land held in trust by the United States for the benefit of a tribe. BIA lease approval is subject to NEPA and BIA has determined that the Campo lease approval is a major federal action which requires the preparation of an EIS. Both the EIS and the lease for the proposed landfill were prepared and approved by the BIA. EPA's comments on the EIS reflected concerns regarding groundwater monitoring and corrective action in the fractured bedrock setting. The Secretary of the Interior signed a Record of Decision finalizing the EIS and approving the lease after consideration of comments. As stated above, the decision before EPA is the Campo Band's program adequacy; states and tribes are the lead entities responsible for landfill permitting and enforcement. The Campo Band has developed its own landfill permitting program and CEPA is the appropriate agency to consider issues relating to a particular landfill on the Campo Reservation.

One commenter asked who will be monitoring what goes on at the proposed landfill and whether Campo would have to answer to the same regulations as the landfills that the City of San Diego must meet. The landfill on the Campo Reservation will be monitored by the facility operator, with oversight by CEPA. Any landfill on the Campo Reservation must comply with the Campo Band's laws. In addition, if EPA issues a permit under the Clean Air Act, EPA will monitor compliance with that permit. A landfill on the Reservation generally would not be required to comply with any requirements imposed by the State of California or a county or city. The Campo Band has, however, worked with Cal EPA to ensure that the Campo Band's requirements are functionally equivalent to California's requirements.

L. Liability for Groundwater Contamination

Several commenters were concerned about who would be liable for any groundwater contamination caused by the proposed landfill. Both the federal regulations and the Campo Band's regulations require groundwater monitoring; the Campo Band's regulations go beyond the federal standards to require monitoring of the vadose zone (soil above the water table). If pollutants exceed specified concentrations, the owner or operator must implement a cleanup program, and provide the funds to pay for the cleanup. Campo Band regulations also require the operator to provide minimum financial assurance of $1 million per occurrence to reimburse third parties for bodily injury and property damage.

One commenter expressed concern about the vagueness of the Campo Band's regulation requiring that the landfill operator maintain minimum financial assurance of $1 million per occurrence to compensate third parties for bodily injury or property damage. The commenter expressed concern that the amount may be inadequate, alleging that the cost of cleaning up the Torres-Martinez facility is high, and that the operator of that facility has declared bankruptcy.

The regulation cited by the commenter provides for $1 million to reimburse third parties for injuries or damage, not for performing corrective actions. Federal regulations do not require financial assurance to compensate third parties. Therefore, the Campo Band's regulation is in excess of federal requirements. The federal regulations do require that landfill owners and operators establish financial assurance for corrective action after a release has occurred (40 CFR 258.73). This requirement is intended to minimize the possibility that the operator will fail to provide sufficient funds to clean up contamination. The Campo Band's regulations (V.C.T.R. 530.41, 530.93), like the federal regulations, require financial assurance in the full amount of the estimated cost of the corrective action in addition to the provision for reimbursing third parties noted above. Moreover, the Campo Band's regulations go beyond the federal regulation. The Campo Band's regulations require that operators provide financial assurance for ''known or reasonably foreseeable'' corrective action—before any release has occurred.

M. Purpose and Effect of Program Approval

One commenter recommended that EPA deny the Campo Band's program because the primary intent of approval is to facilitate the operation of the proposed landfill. The primary intent of EPA's approval of state and tribal programs under Subtitle D of RCRA is to ensure that solid waste permitting programs are in place which will ensure compliance with the federal regulations. EPA believes that the Campo Band's program will ensure compliance of the Federal Criteria. The fact that the federal regulations provide some flexibility to landfills in approved states and tribes and that EPA's approval of a state or tribal program may facilitate operation of some landfills is not an adequate reason to disapprove a state or tribal program. In fact, most states and several tribes are pursuing program approval in part because some of the flexibility provisions will facilitate construction and operation of landfills within their jurisdiction. EPA designed the Federal Criteria with flexibility so that state and tribal regulatory agencies could implement the Criteria taking into account local conditions, while specifically setting criteria which are protective of human health and the environment.

One commenter suggested that EPA's ultimate responsibility is to protect the environment. This commenter also stated that the CEPA regulations will not eliminate or mitigate risks such as the risks to the Sole Source Aquifer at the proposed project site. EPA disagrees with the commenter's statement that CEPA regulations will not eliminate or mitigate the risks at the proposed project site. Prior to promulgation of the Federal Criteria in 1991, a landfill could have been constructed and operated on the Campo Reservation with fewer restrictions than those contained in the 40 CFR part 258 Criteria. The federal regulations were adopted to minimize environmental and public health risks from landfills. These regulations impose strict standards for design, construction, operation, monitoring, corrective action, closure, post-closure care and financial assurance. The Campo Band's regulations set forth stringent standards that meet or exceed the federal standards. CEPA is responsible for ensuring that these standards are met. Although regulations can never completely eliminate risks from a project, the Campo Band has adopted a set of standards in addition to the federal minimum requirements which should result in the mitigation of risks associated with the proposed landfill.

One commenter gave three reasons why owners and operators complying with approved state/tribal programs should not be considered to be complying with the federal regulations. First, only certain elements of approved programs may be modified in approved programs. Second, the Campo Band is not a ''state'', and therefore cannot modify the requirements in 40 CFR part 258. Third, the statement in the tentative determination shows that a purpose of EPA's action is to restrict citizen suits and create defenses for entities violating the federal regulations.

EPA disagrees with all three points. First, EPA approval of a state or tribal program does not allow the approved state or tribe to modify or waive entirely the requirements in 40 CFR part 258. The regulations in 40 CFR part 258 allow alternatives to the prescribed federal requirements only when certain criteria are met. These alternatives are allowed in the federal regulations because EPA believes that when the Federal Criteria are met, the alternatives will protect human health and the environment as well as the prescribed requirements. EPA's determination that the Campo Band's program is adequate to ensure compliance with the Federal Criteria is based on the fact that any alternatives allowed by the Campo Band's laws meet the criteria required by the federal regulations. Second, as explained above, EPA has authority to treat tribes in the same manner as states for purposes of implementing RCRA Subtitle D solid waste programs. Third, EPA's action is not intended to restrict citizen suits or provide defenses for landfill owners or operators who violate the federal regulations. If a landfill owner or operator violates the Federal Criteria, it may be subject to citizen suits. EPA's statement in the tentative determination simply expressed the Agency's opinion that, where EPA has found a state or tribal requirement equivalent to the federal requirement, a court is likely to find compliance with the state or tribal requirement equivalent to compliance with the federal requirement.

One commenter raised concerns about possible increases in permitted capacity of the landfill without public review and comment. The commenter also asked if, with program approval, the Campo Band will be able to designate the Class III (solid waste) landfill a Class II (hazardous waste) landfill, bypassing public participation and claiming that enough environmental studies of the area have been done.

The Campo Band's program complies with the public participation requirements of RCRA section 7004(b)(1). In addition, EPA's draft STIR sets forth general standards for public involvement in permit determinations. EPA reviewed the Campo Band's public involvement requirements and found that they are adequate.

In general, issues regarding permitted capacity are not within the scope of program approval and should be addressed to CEPA. The proposed landfill is not authorized to accept hazardous waste. Class II and Class III are California State and Campo Band classification categories for waste disposal facilities. Program approval will not affect the Campo Band's ability to designate a facility Class II or III. Nor will program approval affect the Campo Band's public participation requirements or requirements that environmental studies be done. Program approval simply indicates that the Campo Band's municipal solid waste landfill permitting and enforcement program will ensure compliance with the Federal Criteria. EPA and Campo Band regulations prohibit disposal of regulated hazardous waste in landfills receiving municipal solid waste unless the landfill is permitted to receive hazardous waste by the U.S. EPA or an authorized state or tribe. EPA has not issued a hazardous waste permit for a facility on the Campo Reservation, and the Campo Band is not currently authorized for the RCRA hazardous waste program and, therefore, cannot issue a RCRA hazardous waste permit. For more discussion of hazardous waste issues, see the responses to comments under Category P below.

Several commenters raised the concern that the Campo Band would be able to modify and waive federal requirements. EPA does not agree with this characterization of the flexibility allowed in the federal regulations. The federal regulations contain detailed criteria that landfill owners and operators must meet. In limited cases, the regulations provide that the director of an EPA-approved program may allow alternatives if the owner or operator demonstrates that the landfill meets certain criteria. For example, 40 CFR 258.21 specifies that solid waste must be covered with six inches of earthen material at the end of each operating day. That same section provides that in an approved program the Director may approve alternative materials of alternative thickness if the owner or operator can demonstrate that such alternatives control disease vectors, fires, odors, blowing litter and scavenging without presenting a threat to human health and the environment. The Director may not approve alternative cover that can't meet the demonstration. The Director also may not decrease the frequency of applying cover. The Director may only waive daily cover requirements temporarily when the owner or operator demonstrates that extreme climatic conditions make meeting the requirements impractical. EPA has carefully reviewed the Campo Band solid waste program and determined that it does not provide for any modifications or waivers which would not be allowed under the federal regulations.

One commenter was concerned about the ability to assess ''non-specified, future'' alternatives to the Federal Criteria which would be allowed under an approved program. The comment essentially questions EPA's allowance of alternatives in the federal regulations. EPA explained its rationale for providing such discretion when it promulgated the federal regulations, 56 FR 50977, 50984–88 and 50992–94 (October 9, 1991). Any challenge to these regulations must have been brought within ninety days of the promulgation of these regulations, pursuant to RCRA section 7006. EPA's approval of the Campo Band's program is based on EPA's conclusion that the Campo Band's laws contain all the criteria set forth in the federal regulations for allowing alternatives to

the self-implementing federal requirements.

Several commenters stated that the Campo Band would be able to set up defensive barriers to citizen enforcement actions to correct problems at the landfill. EPA does not agree. The owners and operators of *all* landfills will be subject to citizen suits under section 7002 of RCRA. That section allows any ''person'' to sue any ''person'' who is violating any permit, standard, regulation, condition, requirement, prohibition, or order under RCRA, or who has contributed to the handling of solid waste which may present an imminent and substantial endangerment to health or the environment. Under this provision, citizens may sue landfill owners or operators for any violation of RCRA or the federal regulations. The citizen suit provision will remain in effect—and be equally available to citizens—whether EPA approves the Campo Band's solid waste permitting program or not. In addition, the Campo Band has expressly waived its sovereign immunity to allow any affected person to challenge CEPA actions in the Campo Environmental Court. *See* III Campo Environmental Policy Act 302. EPA's approval will not enable the Campo Band, CEPA or Mid-American Waste Systems, Inc. to establish any defensive barriers to citizen enforcement actions.

One commenter stated that program approval is a dangerous precedent-setting move because the proposed landfill is the largest proposed solid waste facility in the nation on an Indian reservation. EPA does not believe that approval of regulatory programs will necessarily set a landfill siting precedent for Indian country. Landfills may be sited in states or in Indian country without EPA approval of the state or tribe's regulatory program. All such landfills must meet the Federal Criteria in 40 CFR part 258. In addition, EPA encourages states and tribes to establish local regulatory structures to ensure that municipal solid waste is managed in an environmentally protective manner. The Campo Band has set standards which are more stringent than federal standards, making the proposed landfill more protective of human health and the environment—and making compliance potentially more costly—than if there were no tribal regulatory program in place. EPA recognizes that some of the 40 CFR part 258 flexibility which may be provided to municipal solid waste landfills by approved states and tribes may be important to the proposed landfill. However, EPA believes that tribes should have the same opportunities as states to establish systems of landfill permitting and enforcement. As discussed above, states generally may not regulate solid waste management in Indian country, and EPA does not generally have permitting or enforcement authority under RCRA Subtitle D. Therefore, allowing tribes to establish solid waste regulatory programs ensures oversight of solid waste practices in Indian country.

One commenter suggested that EPA should deny approval of the Campo Band program because landfills deprive present and future generations of valuable resources and encourage waste production instead of pollution prevention and waste reduction. EPA agrees that waste reduction and pollution prevention are preferable methods of managing municipal solid waste to landfilling, to the extent possible. In response to the growing national concern about solid waste management, EPA developed a national strategy for addressing municipal solid waste management problems. This strategy is set out in a document entitled, ''The Solid Waste Dilemma: An Agenda for Action,'' which EPA issued in February 1989. The cornerstone of the strategy is ''integrated waste management,'' in which the following solid waste reduction and management options work together to form an effective system: source reduction, recycling, and combustion and landfilling. EPA encourages waste reduction and recycling of municipal solid waste. However, EPA also recognizes the need for landfills. Congress required EPA to adopt federal regulations establishing minimum national standards for landfills. However, Congress emphasized, and EPA believes that it is preferable, for local, state and tribal governments to adopt their own solid waste permitting and enforcement programs so that landfills are regulated in a manner that is as environmentally responsible as possible. Therefore, EPA supports pollution prevention as the preferred waste management alternative while continuing to approve state and tribal regulatory programs.

One commenter suggested that the need to site a landfill on an Indian reservation is a problem that has been caused by the government of the United States. Other commenters expressed concern that they are paying the price for what happened to Indians years ago. One commenter noted that no one is protesting other problematic landfills in San Diego County that are not on Indian land. This commenter also noted that ''Mexico is a disaster, but I have the Mexican people come and complaining here.''

EPA acknowledges that there is a great deal of controversy surrounding the proposed landfill. The proposal to site the landfill on the Campo Reservation for the purpose of economic development has raised a great deal of interest and concern among various parties. EPA encourages open communication among these groups and will work to facilitate communication where possible.

However, EPA strongly believes that Indian tribes should have the same opportunities to regulate the environment available to them as are available to states. This is consistent with EPA's Indian Policy and with federal Indian law and environmental law, including RCRA. EPA does not believe that a state or tribal application should be evaluated in a different manner because of controversy surrounding a proposed landfill. Neighbors of proposed landfills in California, for example, have raised concerns about such landfills. These concerns do not diminish the adequacy of the state's program. Likewise, concerns regarding the proposed landfill are most appropriately handled by CEPA.

A number of commenters were concerned that the proposed landfill is being sited on an Indian reservation because the landfill and its operator, Mid-American Waste Systems, Inc., will not have to comply with Federal, State and municipal laws and cannot be monitored by the Government. As stated above, landfills in Indian country must comply with Federal regulations, including EPA's 40 CFR part 258 landfill requirements. Generally, State and local civil regulatory laws do not apply in Indian country. *Cabazon, supra.* However, the Campo Band has established a regulatory system which is as stringent as State and Federal regulatory systems. The Campo Band is not required to establish a landfill permitting and enforcement system, but has elected to do so. Therefore, the proposed landfill will have to comply with the Campo Band's standards. In addition, CEPA and the California Environmental Protection Agency (Cal EPA) have established a cooperative agreement concerning permitting and enforcement at the proposed landfill.

One commenter expressed concern that landfill proponents rather than the Campo Band launched a signature campaign in support of the proposed landfill. Although EPA recognizes that the proposed landfill itself is highly controversial, EPA's decision regarding the Campo Band's regulatory program is

not an approval or disapproval of the proposed landfill. Moreover, EPA's decision did not take into account the sources of support for or opposition to the landfill. Nor is EPA's decision based on the number of comments supporting or opposing program approval. EPA considered and responded to all comments on their merits.

N. EPA Public Participation Procedures

A number of commenters expressed concern regarding public involvement activities related to EPA's tentative program approval of the Campo Band program. Specifically, commenters felt that the question and answer session and the public hearing were held too far away from the proposed landfill site in a community that is not potentially affected and does not rely on groundwater, and that EPA should have held these events at the Mountain Empire High School. One commenter also suggested that EPA hold additional hearings closer to the sources of potential impacts. One commenter expressed thanks to EPA for conducting the hearing in the city of Alpine.

EPA considered a number of possible hearing locations in the area and found that the Alpine Elementary School was the most appropriate location taking into account the size of rooms available, the potential attendance at the hearing, and distance from local communities. The Alpine Elementary School auditorium was the only available room EPA identified which was large enough to hold the number of people EPA expected to attend the hearing. A large number of people attended the hearing and provided comments. It was unfortunate that the location was not closer to the Campo Reservation. However, EPA also provided an extended public comment period, from May 11 to August 1, 1994 for submittal of written comments.

One commenter felt that the **Federal Register** notice should have been mailed to people and organizations who submitted previous written comment or made statements at previous U.S. EPA public hearings on the proposed landfill. First, EPA would like to clarify that extensive efforts were made to make all relevant materials available to all interested parties. EPA had not held previous hearings on the proposed landfill. (EPA has a direct permitting role for the proposed landfill under the Clean Air Act. However, the Clean Air Act draft permit hearing was held after the hearing on tentative program approval. Both hearings were held in the same location.)

Second, in accordance with RCRA section 7004(b)(1), EPA published the tentative determinations in the **Federal Register** and provided an opportunity for public comment. A public hearing may be held at the discretion of the EPA Regional Administrator, in which case EPA must provide public notice of the hearing. EPA conducted a public hearing after receiving public interest in holding a hearing. EPA sent the entire **Federal Register** notice out to persons who requested the notice. EPA also published notice of the tentative decision and the hearing in local newspapers. In addition, EPA developed a fact sheet on the tentative decision which was sent to approximately 150 people prior to the public hearing. Persons receiving the fact sheet were encouraged to contact EPA to discuss questions and request more information such as the **Federal Register** notice. EPA also placed extensive information on the tentative decision, including the Campo Band's application for program approval, in two local repositories (the CEPA office and the public library in the town of Campo) and at the EPA Region 9 office in San Francisco. Information about the locations of the application and other material was noted in the fact sheet that was distributed.

One commenter also suggested that EPA's announcement failed to indicate which portions of the Campo Band's program were ''as stringent'' as the Federal regulations and which portions were not. The underlying premise of EPA's tentative determination of adequacy was that all portions of the Campo Band's program were as stringent as the Federal regulations. This was indicated in the fact sheets. A detailed analysis of how the Campo Band's program compared with the Federal requirements was available in the **Federal Register** notice and the information in the repositories.

One commenter was concerned that many people in Mexico could not be at the hearing and could not speak up. EPA made extensive efforts to encourage participation from Mexico. Several speakers from Mexico were present at the hearing and made comments. In order to facilitate their participation, EPA provided simultaneous translation, so that hearing participants could understand the comments made in either Spanish or English, and so that the court reporter, who recorded all comments at the hearing, could record those made in Spanish for EPA's response.

O. The Campo Band's Application for Program Approval

Two commenters raised concerns about the completeness of the Campo Band's solid waste permitting program application. This concern is related to two issues discussed in the tentative determination, 59 FR 24422, 24426–27 (May 11, 1994).

First, as EPA explained in the tentative determination, specified portions of the Campo Band's then-existing codes and regulations were not adequate to assure compliance with the federal regulations. However, at the time of the tentative determination, the Campo Band had submitted draft revisions to those portions of its codes and regulations. Those draft revisions—Addendum I to the application—were included in the information made available to the public during the public comment period. EPA explained in the tentative determination that it had reviewed these draft revisions and that they were adequate to assure compliance with the federal regulations. EPA went on to explain that, if the draft revisions were fully adopted before EPA's final determination, the Agency would approve the Campo Band's entire solid waste permitting program—including the revised portions. This gave the public an opportunity to comment on whether EPA should approve the program if the draft revisions replaced the then-existing provisions. On June 13, 1994 the Campo Band submitted the final, fully adopted regulations as Addendum II to its application. These final regulations were also made available to the public during the public comment period. The final regulations are identical to the regulations as modified by the draft revisions.

Second, several of the Campo Band's solid waste regulations in effect at the time the Campo Band submitted its application had been adopted as emergency regulations—without public participation—and would, pursuant to Campo law, expire unless affirmed as final regulations. In its tentative determination, EPA explained that these regulations must be affirmed, unaltered, prior to EPA's final determination in order for EPA to approve those portions of the Campo Band's solid waste permitting program. The Campo Band submitted the affirmed, permanent regulations to EPA on June 13, 1994. These final regulations were made available to the public during the public comment period. The final regulations are identical to the emergency regulations.

Therefore, EPA's final determination is based on provisions of the Campo Band's laws and regulations which were made available to the public during the public comment period.

One commenter suggested that EPA's comments on the Campo Band's draft application revealed a number of serious inadequacies in the Campo Band's regulations. EPA did make a number of substantial comments on the Campo Band's draft application. However, in response to EPA's comments, the Campo Band either made necessary changes to its program or the application, or explained to EPA's satisfaction how the existing program met the federal standards. EPA worked very closely with CEPA for many months in reviewing and revising its regulations. The review of regulatory programs is a lengthy and detailed process. The process is particularly complicated when EPA reviews an existing and complex regulatory program like the Campo Band's. EPA's comments on the Campo Band's draft application were the first in a series of comments on the Campo Band's program and requested clarifications of many aspects of the Campo Band's program.

P. Hazardous Waste Issues

A number of commenters expressed concern over who will ensure that hazardous wastes are not taken at the proposed landfill because the state has no enforcement power on an Indian reservation. One commenter stated that there would not be a hazardous waste problem at the landfill because people know what they can and cannot put in their trash and loads are checked for hazardous waste.

Federal requirements under 40 CFR 258.20 prohibit receipt of hazardous waste at municipal solid waste landfills. Owners and operators of landfills must comply with these requirements. The Campo Band's regulations require procedures which are as stringent as the federal standards. CEPA is responsible for ensuring that landfills comply with these standards.

Several commenters asked what has been done about allegations of possible illegal disposal of hazardous waste at a car crushing operation on the Campo Reservation. Under the RCRA hazardous waste program, EPA has direct permitting and enforcement authority. Because there was a possible hazardous waste violation, EPA inspected the site. EPA representatives visited the site on March 1, 1994. A site investigation report was completed in August, 1994. The investigation found no hazardous waste at the site and no evidence of past disposal of hazardous waste.

Q. EPA's Program Review Procedures

The San Diego Astronomy Association (SDAA) submitted comments concerning the potential impacts of the proposed landfill on the SDAA's observatory, which the SDAA stated is located approximately 1 mile downwind from the proposed landfill. The SDAA asserted that its concerns should be given special consideration, over that of residential and agricultural interests, because it is a pre-existing, government-recognized, public, educational and scientific organization. As stated earlier, today's decision is on program approval for the Campo Band, not on permitting the proposed landfill. Therefore, the specific comments on the potential impacts from the proposed landfill are not relevant to this determination.

The SDAA also asserted that EPA has stated no precedents for granting program approval under similar circumstances, and that therefore it would be ''irresponsible, unprecedented, litigious, and a failure of the public trust'' to approve the Campo Band's program. EPA understands the term ''similar circumstances'' in the comment to mean approval of a program under which a landfill could be operated within 1 mile of a facility for observing astronomical phenomena and educating the public. However, EPA is aware of no law preventing the siting or operation of a landfill near such facilities. Therefore, a landfill may be constructed and operated within 1 mile of SDAA's observatory regardless of whether EPA approves the Campo Band's solid waste permitting program.

If the term ''similar circumstances'' in the comment was intended to mean the physical location of the landfill which has been proposed for the Campo Reservation, EPA's responses to concerns about the landfill itself are addressed under Category K above. If the intent was to refer to approval of tribal solid waste programs, EPA's authority to approve tribal solid waste programs is discussed above under Category A. EPA therefore believes that the precedential effect of approving the Campo Band's program will be to ensure that solid waste management in Indian country is properly regulated to protect human health and the environment.

One commenter expressed concern that EPA's decision-making procedure was not sufficiently conservative in placing the burden of substantiation on the permitting requester. Congress established the standard to be met by state and tribal solid waste programs in RCRA section 4005(c)(1)(B)—they must demonstrate that landfills within their jurisdictions will comply with the Federal Criteria in 40 CFR part 258. As EPA explained in its tentative approval of the Campo Band's program, EPA interprets this standard to require, at a minimum, demonstrating that the state or tribal program's technical requirements are as stringent as the federal regulations, that the state or tribe will issue permits to all new and existing landfills, that the requirements and permits are enforceable, and that public participation in permitting and enforcement actions is provided. EPA believes that the Campo Band's program meets these standards.

EPA's procedure in reviewing applications for approval of solid waste permitting programs is very lengthy and detailed. The state or tribe seeking a program approval determination must submit an application that consists of a letter from the program director requesting program approval, a description of the program, copies of all applicable statutes, regulations and guidance, and a legal certification that the laws are fully effective and enforceable. The burden of demonstrating the adequacy of the program is on the applicant. In the case of the Campo Band's application, EPA worked closely with CEPA, carefully evaluating each provision of the Tribe's program and in many cases requiring substantial changes to the program before making the tentative determination that the program assures compliance with the federal regulations.

The SDAA requested that EPA provide the professional qualifications of the EPA staff and management involved in making the determination, in order that the SDAA can assess their professional maturity and wisdom and determine what level of astronomy background should be provided to defend the SDAA opposition to the determination. EPA believes that the question of whether the Agency has properly approved a state or tribal solid waste program should be addressed through discussion of the standards and procedures the Agency has applied. The standard and the procedures employed by EPA in evaluating the Campo Band's solid waste program, and the basis for EPA's determination that the Campo Band's program is adequate, have been fully set forth in the tentative determination, published at 59 FR 24422 (May 11, 1994), and in this response to comments and final determination.

IV. Decision

In the tentative determination, EPA proposed to approve specified parts of the Campo Band's program for which existing tribal law was adequate to ensure compliance with the Federal Criteria. At that time EPA also proposed

to approve all of the Campo Band's program if draft regulatory requirements submitted to EPA with its April 18, 1994 application addendum were adopted before EPA's final determination. In addition, EPA noted that before EPA could grant partial or full program approval, the Campo Band had to reaffirm the February 13, 1994 promulgation of emergency regulations submitted with its final application. On June 13, 1994, EPA received the final, adopted revisions to the Campo Band's MSWLF permit program. In addition, as explained under Category I above, EPA received amendments to the Tribal Environmental Policy Act of 1990 made in response to comments received by EPA during the public comment period.

After reviewing these revisions, and after thorough consideration of the public comments, I conclude that the Campo Band's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the Campo Band is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any state/tribal enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the Tribe's program are already in effect as a matter of tribal law. Today's action is a determination that these requirements ensure compliance with the Federal Criteria in 40 CFR part 258 and does not impose any new requirements with which the regulated community must begin to comply, nor do the Campo Band's requirements become enforceable by EPA as federal law. Consequently, it is not necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that approval of the tribal MSWLF permit program will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Act generally excludes from the definition of a ''Federal intergovernmental mandate'' (in sections 202, 203, and 205) duties that arise from participation in a voluntary Federal program. The Campo Band's request for approval of a MSWLF program is voluntary and imposes no Federal intergovernmental mandate within the meaning of the Act. Rather, by having its MSWLF program approved, the Tribe will be able to implement the RCRA Subtitle D program over landfills within its jurisdiction, and to exercise the flexibility allowed in the rules to conform landfill requirements to site-specific conditions.

In any event, the Agency does not believe that approval of the Tribe's program would result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year; this is due to the small size of the Tribe's program, and the additional flexibility that the Tribe can exercise. Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the Tribal program will not significantly or uniquely affect small governments other than the applicant, the Campo Band. As to the applicant, the Tribe has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: April 12, 1995.

Felicia Marcus

Regional Administrator.

[FR Doc. 95–10508 Filed 4–28–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5200–2]

Tennessee Gas and Pipeline; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Protection Agency (EPA) has offered to potentially responsible parties an Administrative Order on Consent to settle claims for past and future removal actions at the Tennessee Gas and Pipeline Site along the Gulf Coast of Texas, Louisiana and Mississippi and extending along three routes to markets in the midwestern and northeastern United States. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste