

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