

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.

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.

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