

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.