

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