

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