with respect to regulation of solid waste in Indian country. As discussed below, the legislative history supports EPA's position that Congress did not intend to abrogate tribal sovereignty and give states jurisdiction over solid waste management in Indian country. Finally, EPA's interpretation is consistent with the Agency's long-standing Indian Policy and previous statements about the regulation of solid waste.

Finally, the commenter argued that Chevron deference is less appropriate when an Agency adopts a statutory interpretation that is inconsistent with past policy and the new interpretation is not triggered by a change in the law or a problem arising from the previous interpretation, or accompanied by a reasoned analysis of the need for a change. The comment cites the preamble to EPA's 1979 guidelines for development and implementation of state solid waste management plans, which provides that "states with Indian Lands should therefore address solid waste management on these lands in accord with treaties and State policy.' 44 FR 45078-79 (July 31, 1979). The comment also cites the regulation itself which provides that "the State plan shall provide for coordination, where practicable, with solid waste management plans in neighboring States and with plans for Indian Reservations in the State." 40 CFR 256.50(m) (1979). EPA disagrees that these provisions render deference to the Agency's interpretation of RCRA less appropriate. EPA has not changed its position. The provisions cited do not order states to regulate Indian country, but instead recognize that states are generally precluded from exercising regulatory authority over Indian country, and support EPA's long-standing policy that tribes are the appropriate non federal sovereign to regulate the environment in Indian country. The cited provisions suggest that EPA recognized that solid waste management plans in Indian country are separate from the plans in effect for the surrounding state, just as are plans in other states. EPA explained in the preamble that it added § 256.50(m) "to encourage coordination with tribal solid waste management programs." 44 FR 45079 (July 31, 1979).

Under the citizen suit provisions of RCRA citizens can enforce the 40 CFR part 258 regulations. According to some of the comments, this means there would be no gap in enforcement of the MSWLF requirements in Indian country. While EPA acknowledges that the requirements of 40 CFR part 258 would be in effect in Indian country even if tribes could not obtain approval of their MSWLF permit programs, this

would not achieve the same programmatic results. The ability to file a citizen suit under section 7002 of RCRA when a MSWLF fails to operate properly is not comparable to having a primary and complete system in place for solid waste management. Moreover, citizens have the right to sue regardless of the status of a state or tribal program. The existence of citizen suit enforcement of the Federal criteria is therefore irrelevant to the issue of how to fill the gap that exists in the permitting of MSWLFs in Indian country. Congress has not provided a mechanism that would be equivalent to recognizing tribal authority directly.

One commenter asserted that, through the citizen suit provision (which would subject any owner or operator of an MSWLF-including tribes and non-Indian landfill owners or operators in Indian country—to enforcement) Congress abrogated tribal sovereignty. The commenter implies that Congress intended for states to regulate solid waste management in Indian country. EPA disagrees. The fact that tribes or non-Indian operators in Indian country are subject to RCRA citizen suits does not imply Congressional intent to deprive tribes of their authority to regulate the environment within their jurisdiction. The same citizen suit provision of RCRA also subjects states and the federal government to citizen suits; the commenter's argument would imply Congressional intent to deprive states and the federal government of their authority to regulate as well. The purpose of the citizen suit provision is to provide a back-up system when the authorized government regulatory agency fails to enforce the relevant environmental standards.

One commenter also argued that EPA could instead fill the gap in permitting authority by promulgating reservationspecific MSWLF standards for interested tribes in place of the nationwide 40 CFR part 258 requirements. EPA acknowledges this may be a potential alternative. But, consistent with EPA's Indian policy and its emphasis on tribal self-government, the Agency believes that tribes should be given the opportunity to operate the program directly where the statute allows for such authority. The comment merely offers an alternative method of filling the gap, implicitly recognizing that a gap exists to be filled under Chevron.

One commenter argued that EPA may not fill the statutory gap in the treatment of Indian tribes under RCRA unless and until it attempts to remove existing statutory and regulatory "barriers" to treating tribes in the same manner as

states. EPA disagrees that it must take other actions before adopting today's interpretation. Congress has not amended RCRA since 1984. EPA has recommended for several years that an Indian tribes provision be added to the statute, and draft provisions have appeared in bills introduced in the 101st and 102nd Congresses. A comprehensive RCRA reauthorization bill was not introduced in the 103rd Congress. So EPA has endeavored to bring this issue before Congress, but Congress has not amended the statute in any form. Nonetheless, EPA believes that no statutory or regulatory barriers exist that would prevent treatment of tribes in the same manner as states under RCRA Subtitle D. Chevron allows EPA to specify a role under RCRA Subtitle D for tribes to implement MSWLF permit programs in Indian country.

## 4. RCRA Definition of "Municipality"

One commenter argued that states have authority over Indian tribes for the purposes of RCRA because tribes are included in the definition of "municipality" rather than in the definition of "state". This commenter asserted that the Agency goes beyond "filling gaps" in its interpretation of RCRA, and "creates a program from whole cloth" that "directly conflicts with Congress' law." According to the comment, Congress has directly addressed the precise issue of how tribal solid waste programs are to interrelate with state and federal programs by including Indian tribes in the definition of "municipality", rather than "state". "State" is defined to mean:

(A)ny of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

## RCRA section 1004(31).

The only mention of tribes in the statute is in section 1004(13), a part of the "definitions" section of RCRA. Section 1004(13) defines the term "municipality" to mean:

(A) city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization(.)

RCRA does not explicitly define a role for tribes under sections 4005 and 4010 and therefore reflects an ambiguity in congressional intent. The Agency believes that the commenter has misconstrued the significance of the definitions. "Municipalities" are