about the risks to human health and the environment posed by solid waste disposal facilities which receive hazardous waste. H.R. Conf. Rept. 2867, 98th Cong., 2d Sess., at 117 (1984) ("environmental and health problems caused by RCRA Subtitle D facilities are becoming increasingly serious and widespread"). While Congress mandated that the EPA revise the open dumping criteria, Congress did not specify the exact scope of the revised Federal Criteria or the manner by which they would be implemented in states without approved programs. Thus, it was left to EPA's discretion to implement section 4010(c) in a manner that would effectuate the statutory goals and policies reflected in the language of RCRA, including the Hazardous and Solid Waste Amendments (HSWA).

One comment asserted that EPA may only determine the inadequacy of a state program in the context of filing its own enforcement action under section 4005(c)(2). The basis of this assertion is unclear, because section 4005(c)(1)(C) is clear that EPA is to make a determination of the adequacy of each state program, and that EPA may make such a determination in the context of approval or disapproval of a state solid waste plan—not necessarily in the context of an enforcement action. Section 4005(c)(2)(A) separately gives EPA the discretion to enforce the Criteria where EPA has determined that an adequate program is not in place. The commenter's reading would suggest that the adequacy of state programs will be determined only in enforcement actions. This reading would make any EPA determination under section 4005(c)(1)(C), and the section itself,

The commenter further asserted that any finding of inadequacy can only be met by EPA taking an enforcement action against the owner or operator under RCRA sections 3007 or 3008. The comment implies that if EPA determines that a state program is inadequate, the Agency cannot grant solid waste management jurisdiction to a tribe within the state. However, EPA's authority to determine the adequacy of a tribal solid waste program is not predicated on determining that the state regulatory program is inadequate. As discussed above, EPA's authority to approve tribal programs is predicated on established principles of federal Indian law, the holding in Chevron, and EPA's Indian Policy.

It is clear that section 4005(c) of RCRA required states to develop permit programs and gave EPA the authority to evaluate state programs. Tribes are sovereign governments with civil authority over Indian country that is comparable to the civil regulatory authority of states outside of Indian country. Thus, EPA continues to believe it is a reasonable interpretation of this section and RCRA Subtitle D more generally for tribes to have the opportunity to apply for approval from EPA to run their own programs.

9. EPA Has the Authority To Approve Tribal MSWLF Programs on a Case-by-Case Basis

EPA also received comments suggesting that EPA's notice announcing its tentative determination to approve the Campo Band's application did not comply with the requirements of the Administrative Procedure Act (APA). One commenter argued that EPA cannot approve individual tribal programs until it promulgates a rule which specifies the criteria and procedures for approval. This commenter noted that other environmental statutes which provide authority for EPA to treat tribes in the same manner as states require EPA to promulgate regulations to implement the tribal program. EPA disagrees that it must promulgate regulations as a precondition of approving tribal programs. As with state MSWLF permit programs, EPA believes that Congress has provided adequate authority to approve tribal programs under section 4005(c) of RCRA based on the statutory criteria contained therein. Congress did not specifically require that EPA issue a rule specifying criteria and procedures for approval of state programs, and EPA maintains inherent authority to make such determinations on a case-by-case

The commenter also argued that a rule is necessary before approving any tribal program because otherwise there would be no standards for assuring the reasonableness of treating tribes in the same manner as states for purposes of RCRA Subtitle D. as there are under other environmental statutes which specify an explicit role for tribes. Another commenter asserted that EPA lacks standards for approval of tribal or state programs, and that, if Congress were to amend RCRA to allow for treatment of tribes in the same manner as states, it would likely require EPA to promulgate regulations for such treatment. EPA disagrees that standards are lacking. RCRA section 5004(c)(1)(B) requires states to adopt and implement ''a permit program or other system of prior approval and conditions to assure that each solid waste management facility will * * * comply" with the Federal Criteria in 40 CFR part 258. 42 U.S.C. 6945(c)(1)(B). RCRA section 7004(b)(1) states that "public

participation in the development, revision, implementation and enforcement of any regulation * program shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. 6974(b)(1). As EPA explained in the tentative determination, the Agency interprets this statutory requirement to impose the following standards on state and tribal programs: tribes and states must (1) have enforceable standards for new and existing MSWLFs that are technically comparable to the Federal Criteria in 40 CFR part 258; (2) have authority to issue a permit or other notice of prior approval to all new and existing MSWLFs within their jurisdiction; (3) provide for public participation in permit issuance and enforcement; and (4) show sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program. EPA has determined that the Campo Band's solid waste permitting program meets these requirements. 59 FR 24422, 24423 (May 11, 1994).

In addition, as explained in the tentative determination, EPA has requested tribes to demonstrate that they are federally recognized, have a government exercising substantial governmental duties and powers, have the capability to operate a program, and have adequate civil regulatory authority to do so. These are the criteria Congress incorporated into the Clean Air Act, Clean Water Act, and Safe Drinking Water Act provisions that allow EPA to treat tribes in the same manner as states. EPA has determined that the Campo Band's program meets these requirements. 59 FR 24422, 24423 (May 11, 1994). In fact, on May 11, 1992, EPA approved the Campo Band's application for treatment as a state under Clean Water Act (CWA) section 518(e) for the purposes of CWA section 106. On September 28, 1993, EPA approved the Campo Band's application for treatment as a state under Clean Water Act section 518(e) for the purposes of CWA section

Alaska argued that EPA's tentative determination to approve the Campo Band program constitutes a proposed rule under the Administrative Procedures Act (APA) since, in Alaska's opinion, the preamble establishes the general standard that Alaska Native Villages are eligible to submit MSWLF permit programs for approval. Among other things, Alaska criticizes as misleading EPA's placement of such a substantive rule in the "Notices" section of the **Federal Register**, rather than the