

1986

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## Recommended Citation

Taylor JC. Wilson DM. Wiseman FS. Proposed hazardous waste facility on Indian trust land. Indian Health Service, Staff Office of Planning, Evaluation and Research, Rockville, MD 20857 (E-87). 1986

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9/23/84  
E126  
#47

THE DEVELOPMENT OF A HAZARDOUS WASTE FACILITY  
ON INDIAN TRUST LAND

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ABSTRACT

A California tribe is considering the development of a PCB waste storage facility. The authors undertook a study to determine the technical, regulatory and jurisdictional considerations unique to the operation of toxic or hazardous waste facilities on Indian trust land.

Technical considerations were researched through interviews and review of public law information provided by the EPA Region IX Office, and the School of Public Health at San Diego State University. Jurisdictional and regulatory issues were researched through EPA, the LEXIS and NEXIS data base systems of Mead Data Central and consultations with Indian law attorneys.

Results indicate that the trust status of tribes may result in direct enforcement of the Toxic Substance Control Act by the federal government through EPA in the stead of delegated enforcement through the State Dept. of Health Services. Title 40 requirements would still hold. Stricter state scrutiny would not apply. There would be no significant differences in technical requirements for design and operation, but siting requirements might differ from requirements for similar off reservation facilities.

## INTRODUCTION

The siting of hazardous waste storage and disposal facilities is one of the more difficult environmental problems facing both industry and government at all levels. Public perception regarding sites and the resultant political activities tend to overshadow engineering considerations. Government policies regarding hazardous materials may be as much a reflection of the public's fears about hazardous materials as it is a response to risk assessment.(1) Local governments are less insulated from their constituents and therefore more sensitive to these public concerns. The result is that state and county governments may sometimes impose stricter standards than are found at the federal level.

Companies sometimes view the unique jurisdictional status of Indian trust land as providing a means to establish business sites which are outside the regulatory ambits of the states and counties. Within this context, companies dealing with hazardous waste may see an opportunity for less cumbersome siting procedures on Indian trust land, and therefore approach tribal governments with site proposals. The fact that most reservations are in remote locations makes them attractive as potential hazardous waste disposal sites.(2) In August of 1985, PCB Incorporated of Missouri approached the Campo Band of Mission Indians with one such proposal to site a temporary Polychlorinated Biphenyls (PCB) storage facility on the Campo Indian Reservation in San Diego County, California.

PCB Incorporated proposed to construct a 6,000 square foot warehouse type structure on a ten acre tract of trust land to be leased from the Band for \$25,000 per year. The company officials estimated that the facility would receive a maximum of 132,000 pounds of PCB materials and articles per day. The materials would be segregated and stored on site for up to one year before shipping to Chicago, Illinois for incineration, or to Kansas City, Missouri for a detoxification process. The Band was to receive a royalty of 1¢ per pound of material received. The construction of the facility would be in accordance with the Code of Federal Regulations, Title 40, Part 761.(3) The estimated staff required by the facility would consist of five warehouse employees plus a supervisor, a secretary, and a facility manager. With the exception of the facility manager, the staff would be hired from members of the Campo Band.

In February of 1986, PCB Incorporated withdrew their proposal for the facility. Company officials indicated that they withdrew because of adverse political pressure generated in the local media, and because the tribal government was hesitant about entering into a final contract.

The authors of this paper are environmental health officers assigned to the Escondido District Office of the U.S. Indian Health Service in Southern California. They acted as environmental health consultants on behalf of the Campo tribal government in evaluating the company's proposal and in reviewing the health risks associated with PCBs. Current literature and regulations regarding PCBs were researched. Jurisdictional issues were also reviewed, and liaison was provided between the Campo Band, PCB Incorporated, San Diego County, the Environmental Protection Agency, and the Bureau of Indian Affairs.

The information in this paper is presented in three sections. The first of which provides a general discussion of PCBs including information on chemical properties, development and use in industry, occurrence in the environment, observed toxicity, pathologic effects of exposure, and current requirements for disposal. The second section discusses jurisdictional issues associated with Indian trust land, and the third section provides a summary of the involvement of the various government offices with the Campo Band and PCB Inc. of Missouri.

### PCBs: GENERAL DISCUSSION

Polychlorinated Biphenyls are a group of chlorinated hydrocarbons manufactured by the controlled chlorine substitution of the biphenyl molecule. Over two hundred molecular arrangements are theoretically possible depending on the degree and position of chlorine substitution, and slightly more than one hundred formulations have been used in actual practice. The properties of the PCB molecule have made this chemical one of the most widespread and persistent environmental contaminants in existence, a contaminant which has adversely affected ecosystems on a global basis. The human population must be considered as an integral component of the ecosystem, not only generating the environmental burden of contaminants such as PCBs, but also representing the ultimate sink in any ecosystem approach since these contaminants bioaccumulate through the various trophic levels in the food chain. Potential human health effects must therefore be given serious consideration when discussing PCBs and considering solutions to environmental problems related to toxic chemicals of this type.

The chemistry, properties, and characteristics of PCBs have been described in detail by Hunzinger(4) and others. A brief discussion of this information will be provided here. PCBs were first synthesized in 1881, but were not used industrially in the United States until 1929 when they were produced principally by Monsanto Corporation under the trade name Aroclor. Production of PCBs in the United States was banned in 1977 by the Toxic Substances Control Act(3) when serious environmental concerns with these chemicals became evident, however for about fifty years they had been manufactured and widely used by industry. PCBs have a number of properties which make them desirable for industrial use such as a high dielectric constant, chemical and thermal stability, non-flammability, and relatively low cost. They are used primarily as insulating fluids in electrical transformers and capacitors, and as heat transfer substances, cutting oils, hydraulic fluids, lubricating oils, and plasticizers. Additional applications for the compounds have been found in paints, printing inks, carbonless copy paper, sealants and adhesives.(4,5,6)

Unfortunately, the same characteristics that make PCBs desirable from an industrial standpoint also make them environmentally persistent and accumulatible. They are extremely stable compounds which are resistant to acid-base reactions, hydrolysis, oxidation, photogradation and thermal changes. They are poorly metabolized by biological systems and tend to bond tightly to particulate matter such as soil. The half life of PCB compounds is estimated to be eight to fifteen years.(4,5,6)

PCB molecules are nonpolar and therefore poorly soluble in water and extremely soluble in fats and oils. They are poorly metabolized and tend to accumulate in biologic tissue, building up through the food chain and increasing in concentration by several orders of magnitude at each succeeding energy level. These effects have been studied in detail in aquatic ecosystems such as the Great Lakes. Such systems are very susceptible to accumulation of compounds such as PCBs due to their large surface areas, extreme depth and hydraulic detention times, and highly sensitive biota. These factors, when coupled with close proximity of the Great Lakes to highly industrialized areas of the United States and Canada have made them major reservoirs for the accumulation of toxic chemicals. Important routes of PCB entry into the environment have been losses during the process of manufacture, leakage from electrical equipment and other products, and atmospheric transport.(5,6,7) PCB concentrations in the water of Lake Huron range from 2 to 10 parts per trillion, planktonic concentrations range from 20 to 200 parts per trillion, and concentrations in sports fish can be expected to reach levels of 2 to 20 parts per million. These concentrations have been declining since the ban on U.S. production in 1977, although the loss rate for PCBs in the environment is extremely slow and it will take many years for these concentrations to reach insignificant levels (5,7).

Since man must be considered the top carnivore in an aquatic food chain such as exists in the Great Lakes, the potential for adverse human health effects from environmental exposure to PCBs has been given a great deal of attention in recent years. Occupational exposure to those whose work brings them in close contact with PCBs is also of concern. Acute exposure of human populations to very high concentrations of PCBs has been observed in a few instances such as the Yusho incident which occurred in Japan in 1969. In this case, a population was exposed to PCBs in concentrations as high as 2000 ppm when oil used in cooking rice was contaminated by PCBs which leaked from an electrical component in a cooking appliance. The most common acute symptoms exhibited by this population of about one thousand Japanese were hyperpigmentation and acne-like lesions (chloracne), discharge from the eyes, central nervous system symptoms, and vomiting and diarrhea. Many of these symptoms persisted for a number of years following exposure, and were also apparent in nine of the ten live births to women affected. Although the percentage of cancer deaths among Yusho patients appears to be above the norm, these statistics may not be significant when studying the effects of PCBs because other toxic compounds were also present in the rice oil and the period in which the deaths occurred may be too short for cancers resulting from this type of exposure to show up.(8,9)

Epidemiologic studies of human populations have thus far found no significant pathologic effects of environmental or occupational exposure to PCBs with the exception of the effects on skin tissue previously mentioned.(8) The effects of long term chronic exposure to PCBs have been studied extensively in laboratory animals. PCBs are known to disrupt the normal function of certain enzymes and have an adverse impact on nervous system processes. Pathologic effects of PCBs which have been observed in animals include chloracne, reduced thyroid function, the induction of liver tumors, thyroid dysfunction, atrophy of lymphoid organs, and substantial reproductive effects. The role of PCBs in liver carcinogenesis in laboratory animals has attracted considerable public health and research interest. Research has clearly demonstrated that the compounds can act as tumor promoters, however it remains difficult to assess

their potential hazard as carcinogens in man.(10,11) As is the case with other toxic chemicals such as the dioxins, it is difficult to assess the long term health implications of chronic PCB exposures to human populations. Laboratory animals of various species show a marked variation in response when exposed to these types of chemicals.(1,8,10)

The implications of the observed toxicity of PCB compounds has prompted the Food and Drug Administration to set a limit on PCB concentrations of 2 mg/kg in the edible portions of fish tissue. Similar limits have been set for other food items.(12) Unfortunately, sports fishermen and subsistence fishermen in an area such as the Great Lakes catch many fish which may have a much higher concentration of PCBs in their tissues than the FDA limit. This can result in a potential health risk to families who consume large quantities of these fish.(5) The transplacental passage of the PCB molecule has been repeatedly demonstrated, and thus intrauterine exposure of the developing human fetus represents an additional concern along with infant exposure to mother's breast milk(13).

The recognition of PCBs as serious environmental contaminants led to strong regulation of these chemicals under the Toxic Substance Control Act.(3) Although the production of PCBs in the United States has been prohibited since 1977, they are still permitted to be used in most of their original applications. For example, electrical transformers and capacitors containing PCB fluids can remain in operation for the remainder of their useful lives. However, once these electrical components are taken out of operation, the PCB fluids must be treated as hazardous waste if the PCB concentration exceeds 50 ppm. It is estimated that about 60% of all PCBs which have been manufactured in the United States are still in service. Approximately 10% have reached the environment and are in a mobile state. About 5% have been incinerated or degraded, and about 25% have been disposed of in landfills or equipment dumps.(14)

The proper method of disposal or treatment of PCB waste varies depending on the concentration of PCB and the type of PCB waste involved. For example, PCB liquids, which are those containing more than 500 ppm PCB, cannot be disposed of in hazardous waste landfills. PCB liquids must either be incinerated at an approved facility or treated by one of the emerging treatment technologies which chemically strip chlorine atoms from the biphenyl molecule and thereby render the substance harmless.(3) An excellent discussion of the various alternatives to dumping hazardous chemicals in landfills is provided by Piasecki.(15) Storage facilities for PCBs such as the one described in this paper are being developed as a means of segregating PCB wastes and temporarily containing them for up to one year under the regulations, until such time as they can be incinerated or properly treated. Hazardous Waste in America, a Sierra Club book edited by Daniel Epstein,(14) contains favorable comments concerning "the immediate creation of a network of interim storage sites" for hazardous wastes such as PCBs which "will ensure that as technology improves, waste materials can be retrieved and recycled, reused or detoxified." The point is made that in light of advances in the chemical breakdown of PCBs and other halogenated hydrocarbons, "it appears fortunate indeed that the EPA has permitted the storage of wastes like DDT and PCBs in temporary facilities, from which they can be removed and safely degraded."

Provided they are properly constructed and managed, the establishment of

storage facilities designed to complement the incineration and treatment of hazardous chemicals appears to be not only acceptable but desirable from an environmental standpoint. However, the public viewpoint on the siting of any hazardous waste facility is usually negative, regardless of the purpose of the facility. The proposal to build a storage facility for PCBs on the Campo Indian Reservation created considerable concern on the part of residents of the nearby community of Boulevard, and attracted the attention of congressional and local government officials, and the news media. Much of the concern centered around the issue of regulatory jurisdiction of facilities of this type that are sited on Indian trust land. A discussion of these jurisdictional issues and a review of the outcome of the proposed PCB storage facility project are provided in the remaining sections of this paper.

### JURISDICTION

The siting of a PCB storage facility on Indian land raises issues of tribal, state and federal jurisdiction regarding regulation of the facility. While the complexity of these issues are beyond the scope of this paper and need to be addressed by competent legal authorities, there are a few salient points which arise in most cases involving jurisdiction on Indian land.

In general, tribal governments are considered to be the local authority regarding regulation of Indian trust land. These tribal governments are subject to direct federal regulation through such agencies as the U.S. Environmental Protection Agency (EPA) or the Bureau of Indian Affairs (BIA) for enforcement of federal laws such as the Safe Drinking Water Act, the National Environmental Policy Act, and the Clean Air Act.(16,17,18)

The concept of a functional hazardous waste facility being developed on Indian land is a relatively new consideration. The authors researched the ramifications through consultations with the EPA Indian Liaison Officer at EPA's Region IX Office, and by a review of case law and current federal law. There is a substantial amount of legal precedent supporting the notion of tribal self government on a local level on environmental issues covering hunting, fishing, environmental health, water, wastewater and land use zoning. However, there is less precedent directly relating to hazardous waste.

Presently, the questions on jurisdiction for hazardous waste facilities are being resolved among the Environmental Protection Agency, tribal governments and other interested parties through normal legal and governmental channels. Some of the key cases and issues in this process are discussed below.

Current court rulings hold that tribal governments have a special jurisdictional status with local regulatory powers over reservations which is similar to the jurisdictional power of counties. They differ from counties, however, in that they have a trust status which provides a direct line to the federal government on many jurisdictional issues. In this respect, tribal governments are considered to be limited sovereignties with the local authority to regulate matters regarding the use and development of land held in trust by the federal government for Indians. The next level of jurisdiction above the tribal governments in most matters of land use and development is usually considered to be the federal government.(19,20)

This concept is demonstrated in part from the fact that Congress has always left tribal governments intact when passing laws regarding jurisdiction on Indian lands. (21,22,23) It is also supported by the fact that the federal government prohibits the application of any state or county laws on reservations that would encumber Indian property. In this respect, Public Law 83-280(22) deals directly with the jurisdiction of the state and its subdivisions on Indian land. It provides that state criminal and civil laws of general application shall have the same effect on Indian land as elsewhere in the state, but it specifically precludes the application of any law placing an "encumbrance" on Indian property. The scope of this restriction is something which is determined by the courts in particular cases where states or counties seek to regulate reservation activities.

A 1967 Washington Supreme Court case which relies heavily on the encumbrance issue and discusses most of the relevant issues of Indian immunity to state and county laws is Snohomish County, v. Seattle Disposal Company et al. (19) This case involved a non-Indian company, Seattle Disposal Company, which had leased reservation trust land in Snohomish County from the Tulalip Tribe for the operation of a sanitary landfill. Neither the tribe nor the disposal company applied for a conditional use permit as required under a county zoning ordinance. The county sought an injunction against Seattle Disposal Company. The tribe and the company asked for and were granted a summary judgment on the basis that the court lacked jurisdiction and that the zoning ordinance constituted an encumbrance on the land. The county appealed, but the Supreme Court of Washington held that the zoning ordinance was an encumbrance since it placed a burden on the land, depreciating its value.

The county argued that Congress did not intend for a non-Indian company to benefit from the special rights which are granted to Indians. The Supreme Court, however, held that by placing a restriction on the lessee (the non-Indian company) the county would simply be accomplishing indirectly what it could not accomplish directly. This would be limiting the use of Indian land and would constitute an encumbrance.

The Washington Court interpreted the term "encumbrance" broadly to include activities which limit the use of the land and therefore depreciate its value and prevent economic development. Other court cases have interpreted the term "encumbrance" more narrowly to mean activities which actually effect the title of the land such as a lien. (24) In general, however, it can be expected that the term "encumbrance" will be broadly construed to include zoning regulations which inhibit the use or economic development of Indian land, and interfere with tribal government of the reservation. In cases involving ambiguities in Indian laws, the rule of construction and the trust relationship between Indians and the federal government require that the ambiguities be resolved favorably to the Indians.

Other court opinions have emphasized the tribal sovereignty issue and concluded that transferring jurisdiction over reservations to local state or county governments would leave tribal governments with little or no scope to operate, and would therefore be inconsistent with the intent of Congress. (2,19,20)

In 1983 the EPA refused to allow the State of Washington to regulate hazardous waste activities on Indian lands under the Resource Conservation and Recovery



Act (RCRA). (25) The State of Washington applied under RCRA to EPA for authorization to implement a state hazardous waste program. The application included an analysis by the State's Attorney General which asserted that RCRA authorized the State to regulate hazardous waste on Indian lands. EPA approved Washington's program with the exception of its application to Indian lands.

Washington petitioned the United States Court of Appeals, Ninth Circuit, to review EPA's decision to exclude the Indian lands, State of Washington, Department of Ecology, v. U.S. Environmental Protection Agency et al. (2) The court affirmed EPA's decision and opined that the State was yielding to federal jurisdiction rather than tribal for the implementation of RCRA. In this opinion the court also discussed the federal government's policy of encouraging tribal self government as expressed in the current federal administration's policy statement to "reaffirm dealing with Indian tribes on a government to government basis". (26)

More significantly, the court referred to its own previous endorsement in Nance v. EPA (27) of EPA's policy of promoting tribal self-government regarding implementation of the Clean Air Act, 42 U.S.C. (18). The relevant sections are extremely clear on the issue of tribal sovereignty as follows:

"The Clean Air Act specifies that "each State shall have the primary responsibility for assuring air quality within the entire geographic region comprising such state." 42 U.S.C. @ 7407(a). Despite that language, we held that the statute permitted EPA to allow tribes to set their own air quality goals on the reservations. Citing the inherent sovereignty of Indian tribes and the principle of deference to an agency's interpretation of a statute, we concluded that "within the . . . context of reciprocal impact of air quality standards on land use, the states and Indian tribes occupying federal reservations stand on substantially equal footing." *Id.* at 714. We accordingly declined to subordinate the tribes to state authority. *Id.*

In the case at bar, as in *Nance*, the tribal interest in managing the reservation environment and the federal policy of encouraging tribes to assume or at least share in management responsibility are controlling. We cannot say that RCRA clearly evinces a Congressional purpose to revise federal Indian policy or to diminish the independence of Indian tribes. Section 3006 of RCRA is far less explicit than the Clean Air Act provision at issue in *Nance*, which gave the states primary responsibility for the "entire geographic region" within the state. RCRA merely authorizes state hazardous waste programs "in lieu of" the federal program. Since EPA could exclude state authority from Indian lands in *Nance*, it can certainly do so here.

We note that the Clean Air Act has a "Retention of State Authority" provision analogous to the one in RCRA. 42 U.S.C. @ 7416. Like the RCRA provision, the Clean Air Act

provision refers to "states and political subdivisions," but not to Indian tribes.

EPA, having retained regulatory authority over Indian lands in Washington under the interpretation of RCRA that we approve today, can promote the ability of tribes to govern themselves by allowing them to participate in hazardous waste management. To do so, it need not delegate its full authority to the tribes."

It should be noted that the PCB facility proposed for the Campo Indian Reservation would have been regulated under the Toxic Substance Control Act, Public Law 89-272(3) because a portion of that Act dealt specifically with the banning of the manufacture of PCBs and the prescribed requirements for disposal of these materials. All other hazardous wastes are regulated under RCRA. (25)

### PROLOGUE

Activities involving the planning stages of the proposed PCB facility covered a period of time from August 1985 through February 1986. PCB Inc. of Missouri initiated the process by contacting the Campo Tribe. The process ended with the company losing interest in the project due to an adverse political climate and various tribal delays.

The Campo Tribe, along with several governmental agencies, were involved in the planning stages of this facility. This section examines each agency's involvement and jurisdictional position regarding a PCB storage facility on Indian land. The results are representative of the manner in which agencies would respond to any proposal to site hazardous waste facilities on Indian land.

### U.S. INDIAN HEALTH SERVICE

The U.S. Indian Health Service (IHS) has no legal jurisdiction on Indian lands concerning the control of hazardous waste. IHS is a federal health agency for Indian tribes which acts as a consultant on matters of public health and safety. In the case of the planned Campo PCB facility, the IHS acted as a liaison between the Tribe and other responsible governmental agencies. Upon learning of the planned PCB storage facility, IHS representatives met with the Tribe and PCB Inc. of Missouri to obtain as much information as possible about this planned facility. IHS recognized that the U.S. Environmental Protection Agency has jurisdiction on Indian lands regarding control of hazardous wastes under TOSCA and RCRA. (3,25) IHS contacted the Indian Liaison Officer for EPA Region IX in San Francisco, Mr. Mike Monroe, and explained the details of the project to him. Mr. Monroe, along with several PCB Project Officers, provided the Tribe with information about the EPA requirements for facilities such as this. IHS was in regular contact with the Tribe and EPA to monitor the progress of this project. Even though IHS has no legal jurisdiction as the public health agency for the Tribe, it has an obligation to monitor the developments in such a case and provide the Tribe with sound technical advice.

## SAN DIEGO COUNTY HEALTH DEPARTMENT

The Campo Indian Reservation lies within the boundaries of San Diego County. The San Diego County Health Department exercises no legal jurisdiction on Indian lands regarding health and safety issues. The County Health Department became indirectly involved because of concerns expressed by the citizens of the community of Boulevard, California, to their County Board of Supervisors representative. The County Board of Supervisors in turn directed the County Health Department to find out as much as possible about this proposed project.

The County Health Department contacted the Campo Tribe, EPA Region IX, and the Bureau of Indian Affairs in an attempt to obtain information. The County was very concerned because many of their questions could not be properly answered. The County was mainly concerned that this planned PCB storage facility located on Indian land would not be properly managed and regulated.

In discussions with representatives of the County Health Department, they expressed that they support the general concept of PCB storage facilities, however, they were concerned about such a facility being unregulated on Indian land. They were also seeking further information regarding the experience and expertise of PCB Inc. in managing hazardous waste. The County's position is one of not asserting any legal jurisdiction, but seeking to protect the health and safety of the communities surrounding the reservation. The County Environmental Health staff indicated that they sometimes express their concerns through the local media for the purpose of bringing public opinion to bear on issues where they perceive that cooperation is not optimal. County involvement of this type appears to have occurred during the Campo project.

### CAMPO TRIBE

In considering the location of a PCB storage facility on Campo land, the Tribe showed much restraint and consideration of the human and environmental risks of operating such a facility. The tribal government stood to gain a generous return from this project, approximately \$600,000 per year, but they expressed a strong commitment to knowing all the facts before entering into any agreements. They insisted on obtaining all the information possible concerning PCBs from IHS and EPA. The Tribe had some serious concerns about the potential human health risk, possible environmental damage in case of spills, and what liabilities could be incurred by the Tribe in case of problems. The Tribe continually requested that PCB of Missouri provide a plan of operation for their review, but one was never received.

After this project was dropped, there were mixed feelings among the tribal members about whether the facility should have been built. Many were relieved that the project was cancelled due to their concerns about health and safety risks, while others were disappointed about the economic loss to the reservation.

### PCB INC. OF MISSOURI

PCB Inc. of Missouri approached the Campo Tribe in August of 1985, with a request to lease a certain amount of tribal land to operate a PCB storage facility. This company established a satellite office in San Diego with a local representative to coordinate their activities. The company and the

Tribe had many meetings and discussions about entering into a lease agreement for this facility, but an agreement was never reached. The company indicated that the main reasons an agreement was not reached was because of the Tribe's hesitancy to actually meet with the company's lawyers and sign an agreement and the political pressure that was generated from local media and local U.S. Congressmen. The company felt that considering the given political climate, it would probably have taken two to three years to actually begin operation of the facility.

#### BUREAU OF INDIAN AFFAIRS

The Bureau of Indian Affairs (BIA), which is under the U.S. Department of Interior, has the responsibility of overseeing various administrative and land issues regarding Indian reservations in the country. BIA never became officially involved in the planning stages of this facility. BIA involvement is not called for until a plan of operation is developed. In this case one was never developed.

For a major facility such as this planned PCB storage facility, the BIA has an approval process. The following is a listing of the steps which must be followed in obtaining BIA approval:

1. The Tribe must provide BIA with a tribal resolution requesting BIA involvement in the project. If BIA does not receive a tribal resolution, then BIA approval would not be possible.
2. A complete plan of operation for the facility must be provided to the BIA for their review.
3. An environmental assessment must be done for the planned facility. If the assessment indicated that an environmental impact report must be done, the company wishing to enter into a lease with the Tribe must pay for the cost of having this report completed. If an environmental impact report is not required, then the BIA will issue a finding of no significant impact statement. This process is required by the National Environmental Policy Act.(17)
4. The Tribe and company must provide BIA with a copy of the proposed lease agreement. BIA will review this agreement to ensure that the Tribe is obtaining an equitable lease from the company.
5. BIA will conduct an appraisal of the site to ensure that the monetary value of the lease is adequate. The appraisal will include the value of the land and all planned capital improvements.
6. It is a NEPA(17) requirement that the BIA publically notify all concerned parties of the planned project. As a minimum compliance with this NEPA requirement, BIA would run an article in local newspapers giving notification of the planned project. Occasionally, public meetings are also held, but they are not required.

## EPA REGION IX

Indian land in California falls under EPA's Region IX which is headquartered in San Francisco. EPA's regulatory authority on environmental issues includes Indian lands. EPA has been reluctant up to the last few years to extend their regulatory authority to Indian lands. However, in November 1985, EPA issued their "Interim Strategy for Implementation of the EPA Indian Policy".(28) This policy outlines EPA's implementation plan on Indian lands for Fiscal Years 1986 and 1987. In November of 1985 EPA also issued a publication titled "EPA Activities on Indian Reservations: FY85".(29) This publication summarized EPA's activities on Indian lands in FY85 in the areas of water quality, pesticides, toxic materials, solid waste, air quality and radiation. This publication indicates that EPA's main activities on Indian lands to date have been in the area of water quality.

The EPA Region IX Indian Liaison Officer was the main contact person that the various agencies dealt with concerning the proposed PCB storage facility at Campo. The Liaison officer had many conversations with the tribal representatives and representatives of the other agencies and made one site visit to the Campo Reservation. The Liaison Officer informed the Campo Tribe that the planned facility would probably not require a RCRA(25) permit, but would likely be regulated under TOSCA.(3) EPA would closely monitor this site under the TOSCA regulations, which includes monetary penalties for violations. Under the TOSCA monitoring program, EPA would visit and inspect the facility at least once a year. EPA recognized the fact that this type of storage facility is greatly needed, but they had some concerns about the Tribe's ability to properly manage the facility.

EPA clearly asserted to all agencies involved that they have legal jurisdiction concerning hazardous waste issues on federal Indian land. EPA was very cooperative in dealing with the IHS, Campo Tribe, and all other concerned agencies. EPA was willing to meet with the representatives from the County Health Department, the Campo Tribe and IHS to discuss the proposed plans and to attend any public meetings sponsored by the County or local Congressmen. A public meeting was tentatively scheduled by a local Congressman, but it was cancelled due to lack of a definite plan of operation by PCB Inc. of Missouri.

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24. Rincon Band of Mission Indians v. County of San Diego et al, 324 F. Supp. (1971) rev'd on other grounds, 495 F.2d (9th Cir. 1974)
25. Resource Conservation and Recovery Act, Public Law 94-580 (1976) amended by P.L. 95-609 (1978) P.L. 96-482 (1980) P.L. 96-463 (1980) P.L. 96-510 (1980) 42 U.S.C. 6901 et seq.
26. Statement by the President: Indian Policy, January 24, 1983.
27. Nance v. Environmental Protection Agency, 645 F.2d 701 (7th Cir. 1981)
28. U.S. Environmental Protection Agency (EPA), Interim Strategy for Implementation of the EPA Indian Policy. Office of Federal Activities, Washington, D.C. (1985)
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