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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

April 1, 1992

Honorable Jon Kyl
U.S. House of Representatives
Washington, DC 20515-0304

Dear Mr. Kyl:

Thank you for your letter of March 16th concerning the applicability of Federal authorities on Indian lands and specifically as they would apply to the Tri-City Landfill of the Salt River Pima-Maricopa Indian Community.

You are correct in your assumption that Federal environmental laws and regulations do apply on Indian lands. Specifically, the Tri-City Landfill is regulated under the Resource Conservation and Recovery Act (RCRA) as a solid waste management facility and must comply with Federal standards specified in 40 CFR Part 257. However, Congress did not give authority to EPA for permitting or enforcement of the solid waste provisions under RCRA on state or tribal lands. The regulations are not specific with respect to the siting or location of a landfill except for some circumstances under 40 CFR Part 257. Basically, individual siting decisions are within the purview of the applicable tribal, state or local government entity.

On October 9, 1991 EPA promulgated new solid waste landfill criteria, 40 CFR Part 258, which will become effective in approximately two years and may give EPA additional enforcement authorities. This authority is acquired by EPA only if the Agency denies program approval to the applicable state or tribe to administer the solid waste program. At this time, we do not have authority to enforce the regulations but Section 7002 of RCRA contains a citizen suit provision for enforcement.

In response to your question as to whether the tribe improperly located the facility is being considered under the Clean Water Act (CWA). The placing of fill materials in the waters of the U.S. are regulated under Section 404 of the CWA. The U.S.

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Army Corps of Engineers is working with the Salt River Pima-Maricopa Indian Community to address two small areas of the landfill where they believe waste materials were discharged in the waters of the U.S. without authorization from the U.S. Army Corps of Engineers.

And finally, EPA oversight of tribal plans for new landfills or sewage lagoons would generally necessitate our review if an EPA permit is required. In situations where EPA funds the construction of a wastewater treatment facility (i.e. sewage lagoon) a review and approval of facility design and construction plans would occur as well as the preparation and review of an environmental assessment under the National Environmental Policy Act (NEPA). With regard to solid waste landfills on Indian lands, as previously stated EPA does not have permitting authority, however, the agency can provide technical assistance and review of tribal plans on a case-by-case basis. In addition, EPA is a commenting agency for solid waste facilities sited on Indian lands which are subject to the environmental review process under NEPA as a result of a Federal action or expenditure of Federal funds.

If I can be of further assistance, please call me or my Congressional Liaison Officer, Catherine Roberts at (415) 744-1560.

Sincerely,

Deanna M. Wieman

Daniel W. McGovern
for Regional Administrator

cc: Ron Fowler, Army COE - Phoenix
Ivan Makil, Salt River Pima-Maricopa Indian Community