

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Joe Byrd, Principal Chief
Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465-0671

Dear Mr. Byrd:

Thank you for your letter of November 5, 1997, providing us with comments on our draft guidance, "Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country."

Let me assure you that the guidance is not intended to sanction illegal dumping activity or to promote substandard landfill management practices on Indian lands. Rather, the draft guidance document establishes a process to issue site-specific rules that can provide owners and operators of municipal solid waste landfills (MSWLFs) in Indian Country the same flexibility in the management of landfills that is now available in states with approved permit programs. Under this process, proposed alternative approaches to landfill management practices in Indian Country must meet the requirements in the federal MSWLF regulations (40 CFR Part 258). We elected to use this rulemaking process, rather than a Memorandum of Understanding, Memorandum of Agreement, or other vehicle, because the D.C. Circuit Court suggested rulemaking as an appropriate means for EPA to provide warranted flexibility to MSWLF owners and operators in Indian Country. Further, we believe the rulemaking process, as described in the guidance document, serves to protect human health and the environment.

I hope I have clarified the purpose of the guidance and our rationale for selecting a site-specific rulemaking approach. Again, your comments are very much appreciated. They have been entered into the docket, and will certainly be considered, along with other comments received, when we prepare the final guidance.

Sincerely yours,

Robert W. Dellinger
Division Director, MISWD

RO 14257

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Joe Byrd
Principal Chief
James "Garland" Eagle
Deputy Principal Chief

November 05, 1997

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste
United States Environmental Protection Agency
Washington, D.C. 20460

Dear Ms Cotsworth:

The Cherokee Nation has been intimately involved with solid waste issues for many years. Being the owner and operator of a large municipal solid waste landfill has given us unique insights on the universe of solid waste disposal. After having staff review the draft guidance, "Site Specific Flexibility Requests for Municipal Solid Waste landfills in Indian Country," I wish to submit the following comments:

1. It is imperative this guidance is not used to allow the permitting/operation of substandard landfill facilities on Indian lands. The terms "open dump" and "landfill" are often incorrectly used synonymously when dealing with Indian lands. The truth is, open dumping is an illegal activity never practiced nor condoned by the Cherokee government, and we feel strongly "flexibility" should not be used as a tool to lower standards to allow inappropriate/inadequate solid waste disposal practices
2. The recent legal ruling often referred to, as the "Campo decision" should not be misinterpreted. The E.P.A. has in the past and still presently possesses the authority to regulate solid waste disposal on Indian lands. The term flexibility is inadequate terminology. Site specific approval of solid waste disposal facilities on Indian land is a formal, agreement between governments, and thus should be designated with more appropriate language (i.e. permit, MOA, MOU, etc.)

The Cherokee Nation is pleased with the overall direction and intent of the draft guidance. However, I respectfully request these comments (and comments submitted by other Tribal Nations) be considered when preparing the final guidance. If the Cherokee Nation can be of any assistance with this endeavor, please let me know.

Sincerely,

RO 14257

Joe Byrd
Principal Chief

cc: Jerry Clifford, Regional Administrator
David Gray, Director of Regional Native American Office
Kathy Gorospe, Director of American Indian Environmental Office
Bud Squirrel, Executive Director of Community Development