
6

The Role Of Program Infrastructure And Institution In Tribal SWM

I guess the underlying thing that I want to stress is that without adequate resources, technical infrastructure and authorized funding mechanisms, the Navajo Nation cannot fully begin to implement [RCRA] and other environmental programs.

-- Sadie Hoskie Director Navaho Nation Environmental Protection Administration¹

We have approximately 30 or 40 open dump sites. [Our Environmental Quality Commission] know[s] which ones have potentially hazardous waste, and that's in part from doing the technical reviews, but in part talking to tribal leaders and tribal elders who say "Yes, this company dumped here, so and so farmer was dumping pesticides there." That knowledge is there. What they need are the tools to solve those problems.

-- John Schumacher, attorney, Shoshone and Arapaho Tribes, Wind River Reservation

It is useless, and wasteful, to put money into economic ventures where the basic human infrastructure for successfully doing business is not there.

Senior BIA official²

Ability to carry out an effective SWM program depends not only on whether authority to do so exists, but whether that authority is an effective force. How authority is put together-- its program organization and institutional structure, determines how management is planned and carried out, and thus, how and whether SWM goals are met. If program infrastructure is inadequate, the SWM goals will not be met efficiently, or they will not be met at all.

In Chapter 4, tribes were examined as communities working to keep their cultural values intact. In Chapter 5, tribes were examined as nations defining their borders. In this chapter "tribe" is examined not as community or nation, but as organization. Tribal management infrastructure is examined in relation to conventional organization. Like tribal socio-cultural and legal issues described in the previous two chapters, tribes face SWM program infrastructure problems different from that of conventional communities. So, like these other issues, infrastructure contributes obstacles to carrying out conventional SWM.

To examine the role tribal program organization can play in CSWM failure, the following topics are covered.

- (1) The Theory of Organizations: What Makes Organizations Effective?
- (2) SWM Experience and Training
- (3) Motivation of Tribal SWM Staff
- (4) Financial, Physical, and Technological Attributes of the Tribal SWM Structure
- (5) Program Structure

- (6) Local Government Relationships: Back to the Outside and a Rejected County
- (7) Institutional Differences: The Role of Federal Government Institutions
- (8) Conclusions

6.1 WHAT MAKES ORGANIZATIONS EFFECTIVE?

Tribes are a unique entity, and looking at tribes as organizations may at first seem odd. But in organization theory, the structure, function, characteristics, or environment of a particular organization aren't assumed. Instead, various broad components, found to comprise all human organizations are examined. Based on a vast amount of literature, how effective an organization is in meeting its goals is dependent at least on the following factors³:

- (1) Personnel experience and training
- (2) Motivation of personnel to work
- (3) Economic, technological, and physical environment of the workplace, and
- (4) Organization structure, leadership, and relationships.

The general relationship of these factors is illustrated schematically in Figure 4.1. If there are problems with one or more of the factors, carrying out goals is less effective, and perhaps impossible. For the remainder of this chapter, tribes or their tribal SWM programs are regarded as organizations, and sound SWM as their goal. With this treatment, how organizational considerations might contribute to tribal SWM problems can be examined by considering each of the factors in turn.

6.2 ABILITY TO WORK: PROGRAM EXPERIENCE AND TRAINING

Ability to perform work well is dependent partially on the level of experience and training⁴. But staff experience and training in tribal SWM programs is generally inferior to that in conventional community programs for several reasons⁵.

Institution Immaturity

...up until 1 year or 1 1/2 years ago until Blue Legs actually took place, we knew very little about RCRA, very little about the regulations. We knew something about Clean Air and Clean Water, but RCRA was kind of new to us. There had to be a learning process, and we have been stumbling and struggling and going full steam ahead for about the past year and trying to develop our own plans. ...We've got the basic outlines of things we are supposed to do.... But there is no precedent set for reservations in this thing. There has been a learning process, and it has been a very difficult one.

-- Cleve Neiss, Rosebud Sioux Tribe⁶

The most fundamental way that tribal programs differ from conventional SWM authorities is their relative youth. As described in the last chapter, application of most federal laws to tribes was not formally instituted until 1960⁷. Even after federal laws were deemed applicable to tribes, the BIA carried out much of their federal regulatory responsibility⁸. Most tribes only began gaining formal program administrative experience and political savvy in the 1960's through federal anti-poverty programs that located in reservation offices. It was not until 1975, with passage of the Indian Self-Determination and Education Assistance Act, that tribes were given more leeway and responsibility in regulating their reservations⁹.

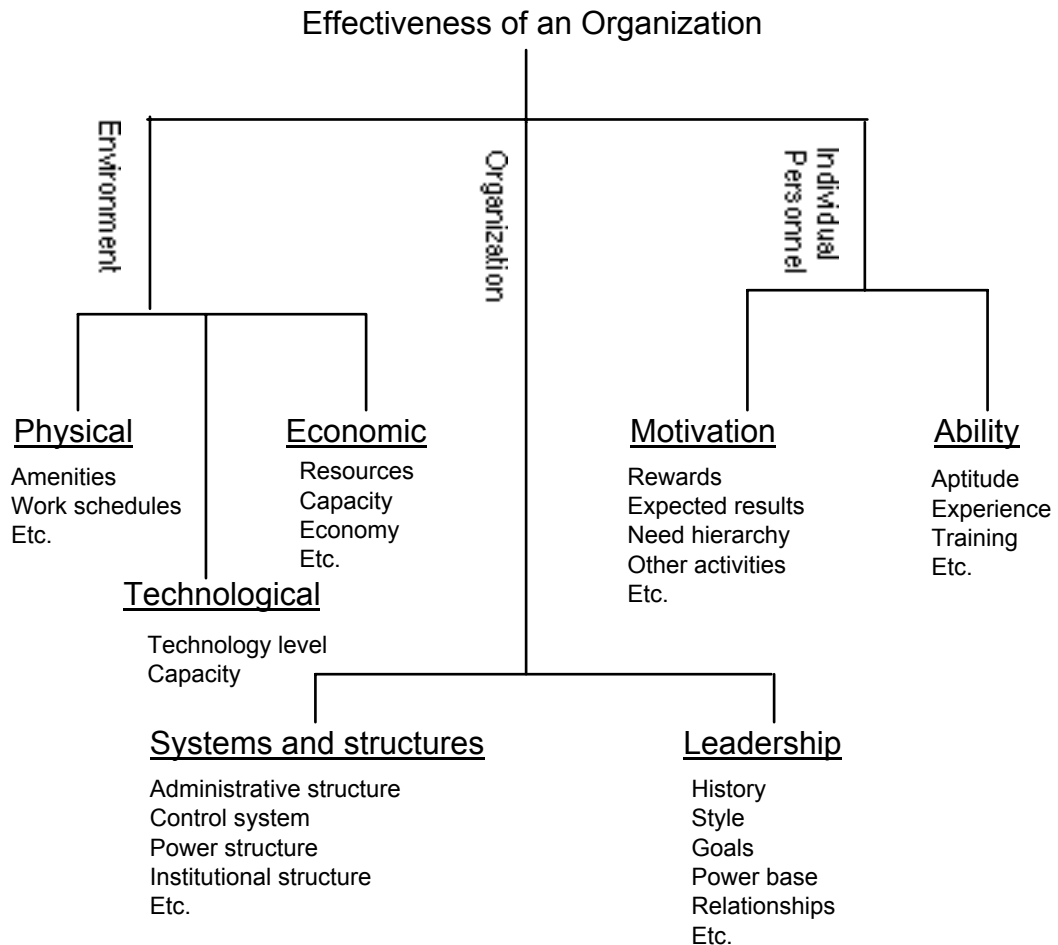


Figure 4-1
Determinants of organization effectiveness (adapted from Handy, C.,
Understanding organizations, Penguin Books, Middlesex, England, 1981).

Thus, even for tribal development in general (i.e. economic and natural resource planning), the administrative structures of many tribes are woefully underdeveloped in needed personnel and institutional expertise¹⁰. As a subset of the new tribal duties and opportunities, tribal capacity for formal environmental management can hardly be expected to be well developed, particularly as it was not until 1986 that tribes were given express statutory authority to implement major federal environmental law¹¹. The urgent need for formal programs in SWM specifically did not become apparent until the late 1980's and early 1990', when public awareness of tribal SWM issues surfaced¹², and RCRA stipulations were made stricter¹³.

Given the relatively short time frame, many tribes have not yet organized a SWM program. Today, it is estimated that slightly less than one-half of the tribes do not have even a more general environmental regulatory body¹⁴. Some 220 tribes have no apparent contact with the EPA¹⁵. Of those that have established tribal environmental protection agencies, it appears that only a small

fraction have instituted specific SWM branches¹⁶. In 1994, some forty percent of tribes had some form of SWM regulation through Tribal Councils¹⁷, but whether the regulation is formal and encompassing is unclear¹⁸.

Inexperienced Personnel

Like I said, to pursue a potential responsible party, you need to have all kinds of documentation, and without a staff you can't do that, can't present your case

*Sadie Hoskie Director Navaho Nation Environmental Protection Administration*¹⁹

One of the problems working with tribes is meeting [grant] deadlines

*-- Director Native American Environmental Protection Coalition and tribal member, Pauma Band of Luiseño Mission Indians*²⁰

Tribes generally hire their own members when they can. But members can not have obtained experience in SWM, or more general environmental, programs that didn't exist until recently. So where tribes do have formal SWM structures, personnel are commonly less experienced²¹. Exacerbating the inexperience in many tribes is a high turnover rate in tribal jobs²². The reasons are complex, but can include instability in the tribal government structure and position funding, cultural unacceptance or aversion in how the essentially bureaucratic jobs are performed and rigidly scheduled, and a "psychology of unmotivation" developed by living in a community where unemployment and welfare can exceed 50 percent, and rampant sociological problems can exist²³. Most program personnel appear to have less than three years experience in environmental affairs, and do not hold college degrees²⁴. In 1994, only 37 percent of tribes in contact with EPA had environmental personnel whose duties were specific to an environmental program, or had environmental technical training²⁵. Assuming that most other tribes have poorly developed programs, or none at all, less than one-quarter of tribes are estimated to have personnel responsible for environmental protection that are trained adequately²⁶.

The lack of experienced staff not only affects the quality of SWM that may be performed, it may have indirect ramifications as well. Program funding, amount of SWM work carried out, and interactions with federal, state, and local agencies can all suffer²⁷. Note, aptitude is not involved; without training, the average person would not know how to conduct a wastestream assessment, the details of RCRA, or how to prioritize open dumps.

The problem of inexperience is compounded by the relative immaturity of the tribal SWM program. The "kinks" in program procedures have not been worked out, so procedures such as grant writing and application, enforcement actions, and SWD site monitoring are often inefficient²⁸. Even when personnel with considerable experience are brought in, establishing a workable regulatory structure requires time²⁹.

Limited Pool of Experienced Employees and Problems with Hiring: An Introduction to the Problem of Scale

Conventional communities can hire experienced staff to partially compensate for a program's immaturity. But tribes don't have the same recourse; tribal sovereignty issues surface. Most tribes are required by their own laws or policies, to hire tribal members when possible³⁰. High unemployment can make hiring outside help politically infeasible, as well³¹. But experienced tribal

members are scarce, partly due to the phenomenon of "scale". Tribes are responsible for carrying out the duties of a sovereign government. Yet, often, tribes number only in the hundreds, or less³². Once critical government positions are filled, finding a qualified applicant from such a small pool is statistically difficult. Compounding the scale problem is the brain drain from reservations begun in the Relocation Period. The average level of completed education for those who stayed on is generally lower than in conventional communities³³.

Even when tribes resort to hiring someone from off the reservation, they face a similar dilemma as non-Indian rural communities. They have to persuade experienced labor to relocate, almost always for a lower salary. Additionally, because the new hires are not tribal members, they face disincentives because they can't vote, and function in an unfamiliar culture³⁴.

Impact of (a Lack of) Training on Tribal SWM Staff Ability

One of the main thrusts of our technical program is that... we sometimes spend \$25,000 in one month for technical expertise, we like to see that money going in the tribal members' hands.

--Mike Connelly, Environmental Director, Campo Band of Mission Indians³⁵

For tribes to administer federal regulations and their own programs, their inexperienced staff must be trained. But adequate appropriate training is not available³⁶. While training may be a problem faced by many rural communities, the issue is more critical for Indian tribes due to the following³⁷.

- (1) Inexperience in formal environmental management, often limited educational background, and high position turnover induces a greater need for training.
- (2) Training funding and availability has been more limited historically (see text below).
- (3) Because training is often conducted by non-Indian governments and organizations, political and logistical concerns, described previously, prevent the participation of many tribes.
- (4) Training that is offered does not address unique tribal SWM circumstances. Also, training may not cover basic skills needed by tribal staff with typically poorer technical backgrounds.

6.3 MOTIVATION OF TRIBAL STAFF

How motivated tribal SWM staff are may impact program effectiveness, as well; the unmotivated may not try as hard to do their jobs well, or take risks in solving problems (see below)³⁸. What makes someone unmotivated? Current thinking holds that humans have a series of needs, of varying individualized importance, including physical comforts as well as psychological, such as self-esteem, group belonging, and a sense of justice³⁹. When an individual expects an act to not meet those needs, or to decrease the level attained so far, they will not want to do it⁴⁰. And there are several aspects of tribal SWM programs that could provoke such a low expectancy in SWM staff members, as well as in Tribal Council members deciding whether to implement or augment a program.

Potential Loss of Sovereignty

Always, always, tribal sovereignty is first...our experience has been that what we give up, we don't get back

--Mary Ann Martin Andreas, chairwoman, Morongo Band of Mission Indians⁴¹

The importance of tribal sovereignty and its ties to SWM is an idea set forth in Chapter 4, and examined in detail in Chapter 5. Especially coming from a group culture, sovereignty is a salient need to tribal members. It allows the Indian Way and so is central to their self-esteem and self-concept. But RCRA, a prime impetus for tribes to operate an SWM program, is seen by many tribes to thwart sovereignty⁴². As described in the last chapter, under RCRA, tribal sovereign immunity is invalid⁴³, tribes are defined essentially as cities⁴⁴, and they are ineligible for delegated programs⁴⁵. Further, carrying out a federal government directive is inherently anti-sovereign⁴⁶. Thus, expectation of an SWM program meeting the "sovereignty need" may be quite low.

Expenditure of Tribal Resources for Federal Aims

We have 90 to 95 percent unemployment on the reservation. We have people on fixed incomes, and... [at] the furthest point from the landfill, it would cost them \$90 a month to haul their trash. If a man is receiving \$300 a month, and he is required to pay \$70 a month to haul his trash, what decision is he going to make? Is he going to buy his family bread, or haul trash? That's the decision we have to make.

-- Cleve Neiss, Rosebud Sioux Tribe⁴⁷

Another circumstance that can serve to lower expectations of met needs is that tribes are spending their resources to comply with the federally mandated RCRA, rather than deal with their own prioritized goals⁴⁸. Channeling of tribal money for RCRA purposes is viewed by many tribes as usurping their sovereign power to decide their own course and program protocols⁴⁹. Their competency as a government is seen to be belittled.

The majority of tribes have very strained budgets. Devoting money to RCRA compliance can displace higher priority environmental and social projects. Safe water supply and wastewater treatment facilities are still lacking in one out of nine tribes⁵⁰. Healthcare is still far behind that of conventional communities, and alcoholism and mortality rates are significantly higher. Unemployment and high school dropout averages about 49 and 25 percent, respectively⁵¹.

Poorer members are unable to afford the oftentimes costly RCRA-compliant disposal options, especially where self-haul distances are long. In 1995, an average of 71 percent of reservation Indians between the ages of 16 and 64 earned less than \$9,048 per year⁵², and discarding wastes at a reservation open dump is free-of-charge.

Technical Responsibilities Without Sufficient Technical Expertise

An additional concern voiced by some tribes is they do not possess the technical expertise to make sound SWD decisions⁵³. Because they may lack such knowledge within their tribe, they are placed in a frustratingly dependent and tenuous position by being forced to rely on federal agencies or consulting firms⁵⁴. These outside bodies may not be able to address or reflect the tribe's concerns with environment, health, and culture impacts adequately⁵⁵. But without sufficient technical

knowledge, tribes are not in a position to know whether their concerns are addressed or not. So their practical sovereignty is affected by making their SWM decisions hollow.

In conventional rural communities, technical knowledge may be lacking as well. But the county is typically in charge-- not a single community, as is the case with most reservations. The state SWM agency exists for oversight and guidance, and a plethora of consultants and contractors are available. Governmental or private, the agencies are from the same western culture as the conventional community; for reasons described in Chapter 4, they thus understand and work best with conventional community concerns⁵⁶.

When tribes don't have sufficient technical knowledge, they need outside consultation --where their concerns may not be understood or given due weight⁵⁷. For example, tribes have placed high priority on such factors as the need to protect ceremonial waters with higher water quality standards⁵⁸, berry -picking grounds from "spiritual" contamination⁵⁹, and sacred lands from disrespect.

This place is spiritually contaminated. To clean it up, we need an apology. Treating the water is good but won't help. What grows there won't be healthy for us without it.

-- Clayton Duncan, Pomo Indian⁶⁰

Aspects of Program, Structure and Institution Affecting Motivation

A lack of motivation can result from aspects of the program itself. Program immaturity and sparse staffing may result in problems with role "overload" and "definition"-- where people are saddled with tasks they are not capable of, in job positions not defined clearly⁶¹. The majority of persons responsible for tribal SWM have other jobs to perform⁶². In small tribes, those duties often extend beyond general environmental work, and the SWM manager is really a "jack of all trades". For example, in one tribe, a very capable member is environmental coordinator, technical support officer, public relations chief, and fire department head⁶³. Low morale might be generated by "role conflict" as well-- other priorities are almost always present with the large number of job responsibilities.

Morale might suffer also because, as examined below, formal program authority and traditional authority conflict, and inefficiency is spawned, thus inhibiting achievement of goals⁶⁴. Additionally, federal agency roles and motivations are unclear, making assistance difficult to obtain. Further, the pervasive presence of the bureaucratic BIA is seen by many to be stultifying because dependence is fostered and paperwork added⁶⁵.

6.4 ECONOMIC, PHYSICAL, AND TECHNOLOGICAL ATTRIBUTES OF THE TRIBAL SWD MANAGEMENT STRUCTURE

Financial, physical and technological resources-- the program "environment", could influence the effectiveness of tribal SWM programs as well⁶⁶. Just as with experience, training, and motivation, the tribal situation in regards to these factors is generally worse than in conventional communities.

Financial Resources

A lack of adequate funding for SWD services is common among rural communities for many reasons, including (1) low average incomes and tax revenues, (2) a dispersed population (associated with expensive collection and hauling logistics), and (3) diseconomy-of-scale issues⁶⁷. As examined below, tribes typically share these problems, but their SWD funding situation is exacerbated,

Federal Funding Issues

When we first started as an agency EPA, we held the States' hands, and we had all these experts going into all these States, and we gave them grants in the beginning for all the States that wanted to develop solid waste management plants. Now 20 years later, Congress and everybody is finally recognizing that Indians have the same rights as States, and recognizing our inherent sovereign ability to regulate the environment, yet they want us to be right where the States are now. Where are those resources? Where is the hand-holding for the Indians?

-- Statement of Steve Dodge, EPA Region V⁶⁸

The municipality clause under RCRA made tribes ineligible for the startup program money and technical assistance available to states since 1976. Essentially, in terms of federal SWM funding, tribes were ignored until the 1990's⁶⁹. There is still a large disparity between state and tribal funding⁷⁰. Further, tribes are in the "catch-up" process of developing their programs, rather than improving them; the funding required is relatively higher than with conventional governments⁷¹.

One of the problems working with tribes is meeting deadlines.

-- Director, Native American Environmental Protection Coalition⁷²

You have to make 20 or 30 copies because everyone loses them.

--Navaho tribal member, in reference to securing a tribal loan⁷³

Further, it appears that, compared to local governments, many tribes have difficulties in receiving the money that is available, likely due in large part to cultural differences described in Chapter 4⁷⁴. In the past, tribes have been ignorant as to what grants or deadlines exist⁷⁵. Because of staffing problems described previously, forms can be lost or sent to the wrong person or there may not be enough time or knowledge to submit funding requests⁷⁶.

General Assistance Program

General Assistance Program (GAP) grants by EPA are increasing each year and reaching more tribes. Some 323 tribes, out of 565 nationwide, were awarded General Assistance Program grants by EPA in 1998, up from about 300 tribes in 1997, and 200 tribes in 1996. Funding increased from \$8.5 million in 1995 to \$48 million for fiscal year 1999. However, the program is not intended for SWM specifically, so tribes have been applying moneys first to general environmental programs, before organizing their SWM branch⁷⁷.

Another problem with GAP in terms of SWM, besides a relatively low award for the work that must be performed, is that it cannot be applied towards cleanup of open dump sites, construction of facilities, or other practical solid waste disposal operations, but only to developing program infrastructure⁷⁸. Recall too, costs for the sanitation facility construction *backlog* identified by the IHS

are approximately \$1.8 billion⁷⁹. So while GAP is providing vital assistance, it is not enough for most tribes to develop a comprehensive program. Last, a problematic issue is that it is only those tribes with adequate staff resources and organization that are able to apply successfully for funding⁸⁰. Thus, those tribes with the greatest need can be left out.

State Funding

In terms of assistance originating at the state level, the majority of tribes are unlikely to receive, or request, state help. One or more of the following reasons exist: (1) strained political relationship, (2) tribal concern over self-determination and sovereignty issues, (3) lack of a structural mechanism for such funding, and/or (4) lack of state money.

Tribal Funding Sources: A Problem of Collateral and a Paradox of Distrust

[With] this requirement by the [EPA] that all open dumps be closed, with possible sanctions, fines, what have you, ... the lack of a tax base of Indian tribes, lack of financial resources, ...there is quite a possibility that this type of regulatory scheme will effect {sic} the tribes with regard to their existence, and what I am talking about is possible fiscal termination of some tribes that can't afford to abide by the regulations that are being imposed.

*Bobby Whitefeather, Chairman, Red Lake Band of Chippewa Indians*⁸¹

Tribes face exceptional difficulties generating SWD funding on their reservations. Because tribes do not own trust lands or the resources on them, they are unable to use them as collateral to secure loans⁸². Additional difficulties in obtaining loans, issuing government bonds, or promoting business investments accrue from the generally poor business atmosphere on reservations⁸³. The poor climate is thought to be due to such factors as the enforcement of Tribal Employment Rights Ordinances, uncertainty in tax and zoning authority, and political instability of many tribal governments⁸⁴.

Bee (1990) cites a remark by a senior BIA official as being typical of the attitude of federal agencies in awarding funds to tribes with unstable governments⁸⁵.

Some tribes have great natural resources, but lack stable tribal governments and are disorganized in their management of tribal affairs. They may not qualify [for BIA seed money to stimulate private sector investment] because they are not equipped to use the money well...

I have a report on my desk right now about a reservation that desperately needs economic development and which repeatedly had projects fail and Federal funding for those projects lost, together with tribal funds. There is political chaos and instability in the government of the reservation. No economic development will succeed there until the governmental problems are solved.

While the practice is perhaps understandable from the agencies' point of view in spending limited resources, a paradox is placed on tribes. Tribes need funding to develop their programs, but it is difficult to secure funds until their programs are reasonably well developed.

Taxation of Tribal Members for SWD Program Services

While legal, tribes face unique problems taxing their members to fund SWD services. A straightforward means for taxation does not exist on most reservations because, unlike local governments, tribes cannot use off-reservation paychecks as a tax mechanism. Neither can tribes impose property taxes on the trust land or houses where their members live. Goods and services sold

on reservations can be taxed, but the amount of revenue generated will be small because there are few commercial enterprises⁸⁶.

Tribes face problems in funding SWM directly through member fees⁸⁷. Again, members are normally quite poor, and may choose not to pay imposed SWM fees. But when members do not participate in tribal SWM services, the primary alternative left is illegal and/or unsound waste disposal; open dumping increases⁸⁸.

Taxation of Non-members for SWD Program Services

Federal courts have adhered to the "no taxation without representation" doctrine on reservations⁸⁹. Non-members can be taxed only through sales of goods and services at tribal stores, or charged a fee for SWM services they consent to⁹⁰. But for reasons discussed in Chapter 4, consent may not be granted.

Technological Differences

Technology is not simply what can be plugged in; an organization's technology is what it is able to do. Tribal SWM technology includes the services tribes provide, what poor disposal practices they can stop, and the equipment they use.

Feasibility of SWD Services: A Return to Scale and Community

Scale affects the SWM alternatives that tribes can provide their community. Because the average population of a tribe is small, and neighboring non-Indians cannot be counted on to use the facility, siting a MRF or a landfill will be uneconomical typically. Further, conventional communities can carry out joint planning to overcome diseconomies of scale. But tribes commonly don't participate in regional or joint SWM planning due to jurisdictional questions, and other reasons described below.

While desirable because it increases tribal jobs and sovereignty, service logistics for a tribal waste or recyclable collection service generally are economically insurmountable for "checkerboard" reservations. Essentially, the problem of scattered residences facing conventional rural communities is exacerbated because non-Indian properties must be "skipped over". The poorly conditioned roads of many reservations contribute further to service unfeasibility.

Enforcement Logistics: More Scale

Scale again is an issue for enforcement. Everyone is a potential open dumper-- Indian and non-Indian alike. And all reservation lands are subject to dumping-- trust or not. But tribes can hire only in proportion to how large their tribe and resources are. So there is a small number of staff per number of people and land area to be covered.

Computers and State-of-Art Technology

Like other engineering fields, high technology has affected how SWM may be carried out⁹¹. Employing computer databases and spreadsheets for record keeping and cost estimations allows staff more time to perform other duties. Accessing Internet on-line Indian advocacy and SWM technical groups can provide information that is otherwise practically unavailable. Ground water modeling software and state-of-art sampling equipment save time and promote a more comprehensive program.

But due to a lack of funding, program immaturity, and inexperienced staff, tribes will tend to possess inferior technology and/or the capability to use it, compared with conventional communities⁹².

Physical Differences Affecting Management Effectiveness

Whether physical differences in the working environment of tribes compared with non-conventional programs contribute (positively or negatively) to how well SWD is managed is unclear. Infrastructure is significantly underdeveloped on most reservations⁹³. The types of differences that exist may include poor ergonomics or working environments resulting from low levels of funding for office resources and/or health education. Differences in cultural expectations, social needs, and perception/value of physical environmental factors, such as the need for open space and light and whether it is provided, could also play a role.

6.5 PROGRAM STRUCTURE

You talked about tribal government and structure, but when you're there you see that what actually gets done and the way it gets done has little to do with your Tribal Constitution and bylaws.

*Little Star, tribe unknown*⁹⁴

How tribes are structured, or organized, can affect SWM effectiveness as well⁹⁵. One unique structural problem facing tribes is they are national governments; their SWM programs are not just community-run, they are nation-run. The nation/community paradox has been documented for tribal business and development ventures⁹⁶. As described in the last chapter, for SWM too, situations can crop up where the "outside" must be dealt with; the tribe as community must be supplanted by the tribe as national government. Switching back and forth between community and nation objectives, i.e. between daily SWM program operations to questions of sovereignty, can prolong and complicate SWM decisions. When decisions are made, they are more difficult to change. The SWM program is relatively inflexible to pursuits that may be advantageous. For example, one tribal SWM program missed an opportunity for the cleanup of its reservation open dumps⁹⁷. Because outside entities were involved, Tribal Council approval was required, and that process took nine months.

Another nation/community problem is that SWM information from outside agencies is sent often to the Tribal Council, rather than to environmental personnel⁹⁸. So the person(s) who is going to be most aware of its importance may not ever receive it. In one case, copies of a helpful informational book on Tribal legal problems in RCRA compliance were sent to all heads of tribes in the California Area⁹⁹. Of 20 tribal environmental personnel polled a year later, none had received a copy.

There is a more subtle, but pervasive structural difference that takes practical authority away from the tribal SWD manager. The tribe as nation and community is reflected both formally and informally within the tribal SWM organizational setup. To examine how this circumstance affects SWM efficiency, the cultural distinctions between tribes and conventional communities, must be viewed from an organizational perspective.

The Difference Between Communities and Societies: Adding Dimension to the Holistic and Conventional

Examining cultural differences in Chapter 4 was confined to looking at the tribe as community. But how an organization is run also depends on culture¹⁰⁰. Thus, the tribal holistic and western conventional cultures are inherently associated with two different organizational styles¹⁰¹. How does an organization style get embedded into a culture? One answer lies with turn-of-century German philosophy. Two primary types of communities, *gemeinschaft* and *gesellschaft*, were distinguished, roughly translated as "community" and "society", respectively¹⁰².

In *gemeinschaft*, factors such as family and land are of central importance. Ties are based on kinship and neighborhood. Commonalties based on similar lifestyles and work are also present¹⁰³. Individuals act in the group's interests. Religious values tend to permeate life because of the sense of dependence on others and land outside oneself. *Gemeinschaft* is associated primarily today with "old-fashioned" rural communities (non-gentrified and minimally-economically diversified) and all "tribal cultures"¹⁰⁴.

In contrast, *gesellschaft* is based on ties that are considered "rationally" formed¹⁰⁵, and based on corporate or national responsibilities, not familial or tribal ones¹⁰⁶. Relationships are formed through interdependence rather than similarities, and the individual acts in their own interest¹⁰⁷.

As evident from Chapter 4, *gemeinschaft* "community" fits the ideal holistic tribal culture well, and *gesellschaft* "society" fits the ideal conventional culture¹⁰⁸. The critical perspective the new terms add is relational. To function, tribes use dependence of people on each other. Conventional communities use interdependence between people.

Authority Structures and Their Dependence on Community Type

In 1922, Weber developed a classic theory offshoot of the two community types that ties them to their form of organizations and governments¹⁰⁹. Because a group's culture and beliefs influence the form of its government, different governmental or authority forms are expected from the traditional *gemeinschaft* "community" and impersonal *gesellschaft* "society".

Importance of Secularism Versus Spiritualism

The separation of church and state, or secularism¹¹⁰, mentioned in Chapter 4, facilitates the separate thinking prevalent in the *gesellschaft* conventional "society". Weber realized that secularism is essential to conventional western culture because it provides people with a justification to abandon traditional "community" rules based on beliefs and values, like spiritualism, and embrace the new set of ordered, impersonal and separate rules on which a market "society" must be based. So utilitarian relationships of a "society" replace traditional family support structures of a "community"¹¹¹.

Bureaucracy and Conventional SWM

That new set of market society rules is carried out by a "bureaucratic" authority, and provides a way of leadership and doing things¹¹². Bureaucracy mirrors and supports the impersonal, logical nature of society. With societal interdependence, everything is interchangeable. There are no community ties to rely on in new situations. Thus, a set of standards to transfer from one situation to another is needed; learning something different each time would be impossible. Bureaucracy

provides those standards with rules that don't favor any one individual on the basis of kinship, spiritualism, or past custom. Authoritative power is won on a "rational-legal" basis¹¹³. So a merit-based hierarchy results-- aligning well with conventional community values and the nature of CSWM already described in Chapter 4. To be interchangeable, jobs are segmented and specific, and added and subtracted as needed.

Thus, the conventional community and bureaucracy support each other and are inextricably tied¹¹⁴. The merit-based and separate thinking of conventional communities is mirrored in how its jobs are performed and structured. The nature of CSWM--how and who carries it out, is actually bureaucratic. Specific standards and results are relied upon, and a merit-based hierarchy is practiced. Persons in specific positions carry out specific jobs and there is a specific person(s) over or under that position carrying out their own specific work.

Traditional Authority Versus Bureaucracy: Association of Community Types

I have come to understand the spiritual and cultural ties of the Indian people to the land, the ability to use the land to make those [SWM] decisions becomes much more significant. Every member feels they should have the opportunity to participate in that decision making.

--Richard DuBey, Attorney, Puyallup Tribe¹¹⁵

In contrast, in non-secular *gemeinschaft*-oriented communities, "traditional authority", an institutionalized pattern of spiritual, charismatic, or familial leadership and way of doing things, is present,¹¹⁶. Leadership is often determined along family, or "clan", lines, and elders are valued as leaders and teachers. As examined in Chapter 4, people tend to act with group values in mind. And social bonds are family-based, not bureaucratically-based¹¹⁷. The fact that tribal sovereignty is such a pervasive concern and affects decision making is completely characteristic of a traditional authority system. In fact, traditional tribal decision-making is often ruled by unanimity, not hierarchy¹¹⁸. Rather than hierarchical authority structures, typically custom, practices, and consensual action are used¹¹⁹. Where hierarchy does exist or is strong centralized, it may be derived historically from cultural traditions¹²⁰.

Traditional authority is derived from some of the same customs and values upon which its culture is based¹²¹. For example, an informal hereditary leadership (elected or not) is based on the idea of family or clan as being the core unifying force within the culture. Such authority serves as reinforcement and validation of the community belief system¹²². As a result, as with bureaucracy and the conventional community, traditionalism and tribal community support each other¹²³.

Persistence of Traditional Authority

[Some] Cherokees simply ignore the official tribal government, which is not of their making. [They] are neither interested nor participant in the affairs of the tribal government. On the whole, they neither support it nor oppose it, and their psychological distance from it is enormous.

--Wahrhafting and Lukens-Wahrhafting¹²⁴

Ostensibly because of the federal trust, the federal government needs to authorize whatever form of government the tribe chooses¹²⁵. So the vast majority of tribes have replaced their traditional government forms with democratic representation (versus consensus) and formal bureaucracies¹²⁶. But they are still holistic communities with a greater or lesser degree of their historical culture intact¹²⁷. So there is still traditional authority-- of spiritualism, of elders, of smaller clans and bands

within the tribe, etc.¹²⁸. Regardless of vacillating Federal Indian Policy, most scholars agree that in modern times, tribal cultural assimilation and acculturation processes aren't predominate-- cultural adaptation is¹²⁹. So traditional authority persists alongside the tribal government bureaucracy¹³⁰. And because the SWM program is part of the formal bureaucracy, traditional authority can exist there.

But where formal bureaucratic and informal traditional authority exist and conflict¹³¹, program structural problems can result, and SWM is more difficult. In contrast, conventional communities may have their own problems, but they don't generally have this one. Bureaucratic authority fits their community culture. Thus, there is no inherent inefficiency in their SWM program structure.

Practical Structural Problems from a Dual Authority System

Given the extraordinary pressures on Indian societies brought by conquest, tutelary external controls, and rapid cultural and economic change, such a breakdown [in tribal consensus over community problems] was surely inevitable. It has been exacerbated by political tribalization, which has replaced fluid, indigenous systems of social coordination and authority with more rigidly structured ones rooted in non-Indian traditions.

--Stephen Cornell¹³²

The dynamics of traditional versus legal structural authority are complex. In some tribes, traditional authority may not rest within the tribe's government at all¹³³. Part of the community will be allegiant to traditional authority, in the form of smaller clans or bands, and may not partake or obey tribal government decisions. Factionalism with the community members following the formal government results¹³⁴. In this situation, regardless of how well developed the tribal bureaucracy is, it may be very difficult for the SWM program to carry out the large number of goals requiring community participation.

In most tribes, because culture does persist, influential traditional authority figures or an informal authority structure (e.g. consensual decisions) are present to some degree within the formal bureaucracy. In fact, the bureaucracy may be burgeoning, and traditionalism may still be an influential force or even the *de facto* decision making procedure¹³⁵. Here, unless there is a traditional reason, the SWD manager won't hold traditional authority. And if that is the case, when traditional authority predominates SWM decisions, the manager will not be the one to decide.

For example, the decision for the Uneconomical Landfill was not placed solely on the SWM manager or Tribal Council¹³⁶. The Cultural Director, a respected elder and medicine man, weighed in heavily, as did other elders. It is not just where tribal sovereignty issues are directly involved that SWM is taken from the hands of its formal director. For example, in one tribe other SWM priorities were set until the elders decided the small open dump adjacent to their berry picking grounds needed to be cleaned up¹³⁷. In another, while prioritizing open dumps, the SWM manager had to bow to the periodic wishes of a staffer in another department because the staffer was the brother-in-law of the head of a powerful family¹³⁸.

The youth of tribal SWM programs can exacerbate the discrepancy between formal and informal chains-of-command. As seen already, the formal roles of individuals may not be clearly defined or fully developed yet. Also, it has been noted the government model tribes were induced to adapt under the Indian Reorganization Act (IRA) was not designed *per se* as a national government administration, but as a means of channeling resources back and forth between the tribe and the federal government, via BIA¹³⁹. Thus, administrative inefficiency is inherent. Where a lack of clarity

or inefficiency is associated with the formal program structure, in-place traditional authority may decide by default.

Recall from Chapter 4 that conforming to traditional authority may be in the tribe's best interests. Such has been found to be the case, perhaps with some modification, in economic development¹⁴⁰. But practical inefficiency results when two (or more) decision makers don't work together. Who decides what is not clear. Time can be wasted setting formal goals that don't reflect traditional priorities. The traditional authority figure(s) won't have all the information that the SWM office will, so time is wasted that way. And time is spent when the decision process moves through both formal and informal channels.

Dual authority can also impair relationships between tribes and outside agencies because the right contacts are not established¹⁴¹. Deadlines for funding can be missed when informal decision makers do not receive the information¹⁴².

Cultural Dysfunction

Tribal people perpetuate a legacy that combines the past, present, and future that requires a decision making process that is holistic in nature.

-- From Statement of Principles, National Tribal Risk Assessment Forum¹⁴³

EPA ...tends to view the regulatory aspect of municipal SWM as being limited to the development of the municipal SWM plan and the development of codes and regulations, as though this were somehow miraculously self-enforcing. The Administration for Native Americans takes a broader view and starts asking the question, what does it take besides the codes?

-- Mervyn Tano, Council of Energy Resource Tribes¹⁴⁴

Practical structural problems result because who decides is in question. Cultural structural problems also exist because of how decisions are made and carried out. Bureaucracies only function well when they have perceived legitimacy¹⁴⁵. The structure of an organization is an outgrowth of its environment¹⁴⁶. But here bureaucracy was thrust upon tribes; the environment was traditional decision making. Thus, as has been found with tribal economic and natural resource development¹⁴⁷, the actual decision making carried out in tribal SWM may not fit its designed bureaucratic program structure.

So, for the majority of tribes, a dual cultural incompatibility exists. First, bureaucratic authority may not work well with traditional tribal community. Second, traditional tribal authority may not work well in carrying out the bureaucratically-derived regulations that are imposed on tribes. How strong the incompatibility is depends on the individual tribe's culture, both in terms of its historical decision making, and in terms of the penchant or desire to adapt¹⁴⁸.

The Ill-fit of Conventional Bureaucratic with the Traditional Community

Having been stripped during the reservation years of much of its indigenous institutional substance, [the "tribe"] was reinstitutionalized politically, but now after dominant-group models and on dominant-group terms. Structures of authority and decision-making, once embedded in the fabric of aboriginal societies, were now attached, as it were, from the outside, institutionally separate from the structures of kinship and custom and modes of thought which had 'governed' Indian peoples.

--Stephen Cornell¹⁴⁹

A bureaucratic system may not work for a tribal community because its principles of impersonality and self-advancement rebuke holism's essential connectedness and group-advancement. A hierarchical SWM structure is imbued inherently with cultural norms and values that don't mesh with holism's goal of process¹⁵⁰. The striking failures of Allotment and Termination provide two cases in point (see Chapter 5). Proponents assumed tribes would eventually adapt to conventional America's lifestyle and values, and embrace capitalism and the bureaucracy that supports it. But both Acts failed precisely because bureaucratic responsibilities and procedures such as taxes, financial planning, and inheritance laws were foreign to Indian ways of living¹⁵¹. Rather than building efficient bureaucratic organizations to compete in the capitalist market, communities typically disintegrated.

The Ill-Fit of Traditional Authority with Bureaucratic Dictates

Is it possible for a waste cleanup plan, EIS, or other environmental management tool to have soul? A plan with no soul doesn't contain the spirit or essence of the environment. It has no life.

-- From Yakama Nation Holistic Engineering Project¹⁵²

Environmental regulations and the procedures they entail, such as cost-benefit analyses and risk assessment, are bureaucratically derived and bureaucratic in nature. They are standardized codes that entail procedures isolated from the context of community and spirituality. In other words, like the bureaucracy from which they come, they are designed as an impersonal means of control-- without regard to the situation context.

Thus, an inherent conflict exists with bureaucracy and the holistic culture of most tribes¹⁵³. But, it is well accepted that regulatory compliance demands bureaucracy, at least to a degree, for reasons including those discussed below¹⁵⁴.

Increase in Specialization and Complexity

For example, bureaucracy allows for the addition and specialization of skills needed for tribal SWM program development. But there is a cultural reason for the general scarcity of formally designated tribal SWM positions. Recall the great majority of tribes are group-based. Carrying out one's responsibilities means carrying out shared responsibilities of the community. Specialization among community members may disrupt the foundation of commonality. Assigning different responsibilities is a step further away from traditional consensus decision making.

Tribes keeping to traditional consensus-style planning for SWM can be thwarted by several obstacles. For example, technical assistance and training programs offered by outside agencies are designed for SWM managers on SWD as an isolated topic, not how SWD fits into the connectedness of earth, water, culture, and religion¹⁵⁵. Inadvertently or not, to obtain funding or assistance, tribes are required by federal agencies (as well as professional organizations) to view environmental problems and propose solutions in terms of the conventional bureaucratic perspective¹⁵⁶. Finally, available record keeping software generally embodies strong hierarchical relationships because it requires systematized groupings and prioritization based on specific record characteristics..

Formalization and Standardization of SWM Procedures

To develop the tribal SWM ordinances that are commonly lacking, tribal policies must be formalized, and to administer the program, tribal activities need to be standardized (i.e. creating citation forms, setting collection times, keeping financial records)¹⁵⁷. In standardizing and formalizing the SWM program, the context of specific SWM situations can be lost, precisely the function and *modus operandi* of bureaucracy. In contrast, historical/traditional environmental "rules" for tribes are not specific or coded. And they *are* context. As examined in Chapter 4, they are defined within what are (or were) appropriate lifestyles.

The removal of context may not be important where traditional behavioral rules and formal regulations agree. But in other cases there may be significant conflict. For example, prohibition of open dumping of hazardous wastes in waterways is a straightforward rule that can be substituted for a traditional code of behavior (assuming education of the dangers). But the implementation of the "no-tolerance" RCRA ban on open dumping of household wastes regardless of location, volume, or source can conflict with what is seen from the holistic perspective as appropriate.

The "overkill" and urban-orientation in environmental regulations can only exacerbate a sense of disenfranchisement with the RCRA "apparatus". Federal regulations are written for across-the-board application. Any exceptions are gained arduously, if at all, through bureaucratic procedures (e.g., the site specific permitting rule described in Chapter 5). Federal regulations specify what should (or should not) be done for a specific situation, but what that situation is, is defined, in general, broadly, and is not described in terms of the community circumstances that would be considered by tribes. They are designed from a western-industrialism view, and thus are written specifically, "cutting off" the full context evoked in a diffuse perspective. Further, the focus of federal regulations is on conventional urban communities, a situation that really *is* different than the one tribes face¹⁵⁸.

Conventional communities should understand the, perhaps necessary, "pared down" context found in federal regulations-- their culture is founded on a universalistic approach to promote realization of their goals. So from the get-go, their SWM should work better than that of tribes' in using and complying with specific SWM regulations. Of course, tribes can develop their SWM program based on holistic principles¹⁵⁹. For example, the prohibition of open dumping could be based on whether, and how much, it threatened the environment. The problem is that holistic treatment means that context of the community is included, thus creating a myriad of SWM situations to be addressed, particularly in setting ordinances and enforcement procedures. For example, a tribe might want to consider whether the perpetrator is an elder, whether the land is sacred, or whether the open dumping is carried out in ignorance. The requirement of a certain size or type waste receptacle, or where it is stored, might hinge partly on an individual's income or age. A comprehensive set of SWM ordinances and enforcement procedures could prove enormously unwieldy.

Market Dysfunction

Carrying out SWM is not simply a governmental activity; it is also a business. From a classic, competitive "market" perspective, the difference in the SWM structure of most tribes from that of conventional communities can create at least two problems. First, the business type and business environment of tribal SWM do not match. Second, the risk-taking environment of tribes can be poor.

Business Structure and Environment

Much organization management research has focused on the relationship between organization structure and its "business environment"¹⁶⁰. Various types of business environments have been matched against which types of management structures exhibit the best performance¹⁶¹. The instability of the tribal business environment has been documented in a number of studies¹⁶². Additionally, tribal SWM requires proficiency in highly-complicated Indian Law, and knowledge of increasingly comprehensive and technical federal environmental regulations.

But what has generally been found for an unstable and complex environment is that decentralized management with specialized personnel (i.e. where specialists have relatively high autonomy in making decisions) may be the most suitable program structure¹⁶³. Accordingly, tribal SWM programs would need trained SWM staff with the ability to make SWM decisions. In the same vein, flexibility, specifically the ability of SWM managers to adjust their activities as needed in response to changes within the reservation and without, would also be key to success¹⁶⁴.

Thus, again, tribes suffer from a structural disadvantage. Most tribes do not have decentralized governments. Traditionally they are consensual, so that individual autonomy is minimal, and formally they are centralized under the Tribal Council. Flexibility in SWM decision making can be limited because of the potentially weighty ramifications involved with outside SWM dealings. And as discussed previously, SWM personnel tend to be non-specialized because pan-Indian holism naturally tends towards generalization, and/or job positions have not been developed fully.

To avoid a business structure/environment mismatch, it has been suggested that the historic and culturally-derived economic system structure of tribes be used to select the types of economic development activities they pursue¹⁶⁵. While it is beyond the scope of this work to determine what such a process would portend for tribal SWM overall, the principle is troublesome because here, while some ventures are optional, such as materials recovery, most functions, such as waste hauling and collection, are not.

Role of Risk-Taking

A bureaucracy is capable of endless adaptive adjustments necessary to sustain its existence. It is thus not only inevitable but indestructible.

-Robert Bee¹⁶⁶

Another market dysfunction that tribes can face is a disincentive environment for risk taking. Risk taking in a business sense is associated with how much innovation and entrepreneurship an organization has¹⁶⁷. In a capitalist market, a reasonable degree of innovation is considered crucial to the success of a large variety of organizations, including governmental ones¹⁶⁸. Because what is needed for sound SWM program changes over time, a healthy presence of risk taking may aid tribes in running effective programs over the long-term. For example, initiation of a novel collection system, waste reuse program, or enforcement strategy requires new ideas, as well as staff who are willing to take the risk of these programs not succeeding.

But risk taking for tribes is discouraged in many ways. As previously discussed, uncertainty in structural management and legal authority for SWM outside issues exists. Motivational problems are incorporated into the infrastructure. The business environment for SWM ventures is unstable-- or perceived as such. Additionally, political issues, cronyism, *laissez faire* and self-serving attitudes within both BIA and many tribal government bureaucracies are prevalent¹⁶⁹. And the federal trust

relationship itself fosters dependence still, regardless of the federal Self Determination policy¹⁷⁰. Recent attempts at BIA reorganization to increase tribal autonomy have failed largely because of the enormous dependence tribes have on accumulated BIA expertise and information¹⁷¹. Further, like the classic underdeveloped country dependent on foreign aid, employment in many tribes is balanced heavily in the tribal government bureaucracy, which is largely dependent on relatively stable federal funding¹⁷². Because jobs here represent the height of security and income on the reservation, "rocking the boat" and risking job loss is discouraged.

Summary of Structural Problems

There are several interrelated structural differences in tribal SWM programs as compared with conventional ones. Practical, cultural, and market related problems appear as a result. Fundamentally, conventional SWM programs, and the environment and society in which they are carried out, are bureaucratic. SWM rules are bureaucratic as well. So SWM is facilitated by the match. But the society and legitimate (as opposed to legal) authority system of tribes is inherently traditional and thus, generally, holistic. The formal bureaucracy in place is new and its origin was essentially forced. And because tribes are communities and national governments, both informal traditional and formal bureaucratic authority can exist for a single situation. Because it is an innate aspect of a community, culture persists and cannot be discarded willfully¹⁷³. Rules are still bureaucratic, but the culture of how things are done is not. Tribes to a large degree are struggling with developing workable program administrative structures that must accommodate this reality¹⁷⁴, in addition to overcoming chronic shortcomings in personnel and institution experience-- not only in SWM, but in pursuing tribal development in general¹⁷⁵.

6.6 LOCAL GOVERNMENT RELATIONSHIPS: BACK TO THE OUTSIDE AND A REJECTED COUNTY

Until the state has failed in an attack on Tribal authority in an administrative, legislative, or judicial forum, the state simply will not negotiate reasonably on cooperative agreements. Needless to say, once a Tribe has defeated a state attack on Tribal jurisdiction, particularly in litigation, the Tribe is much less likely to be interested in cooperative efforts with its erstwhile adversary.

*-- Gover, Stetson, and Williams, P.C.*¹⁷⁶

Recall in Chapters 4 and 5 that one of the problems tribes can face in carrying out their SWM programs as community and nation is hostility from the non-Indian community; tribal jurisdiction is challenged. Program infrastructural problems are worsened because enforcing tribal laws is made more difficult logistically. Effective planning is harder; obtaining data on the non-Indian inputs and outputs to the reservation wastestream is more difficult¹⁷⁷. Again too, non-Indians who are hostile are not likely to participate in tribal SWM services. Tribes can't force them, so services that otherwise would be economically feasible with full reservation participation are not.

Difficulties can occur not only between communities, but between the two government organizations¹⁷⁸. A hostile and/or uninformed community can elect a hostile and/or uninformed government, and/or local governments can vie with tribes for authority over fee lands. Another reason the relationship between tribes and local governments can be strained is a difference in status¹⁷⁹. Tribes are sovereign nations by law, and are accorded greater power than states in some situations¹⁸⁰. Local governments are substantially lower in the hierarchy, but tend to be wealthier.

Thus, because there is no prescribed relationship between tribes and state and local governments, the tribes are isolated, and little interaction for the large majority of tribes takes place¹⁸¹. Tribes can contribute to the estrangement because they can perceive it diplomatically "beneath them" to deal with local governments¹⁸², or philosophically/politically unacceptable to deal with states because of historic differences on reservation jurisdiction¹⁸³. Building a mutual rapport can confer an informal higher status on local governments that tribes may not wish to confer. And they may be wary simply of bringing in the outside, for reasons examined in the previous chapter. But for SWM to be carried out effectively, interaction is needed¹⁸⁴. Regardless of the difference in status, local governments are the counterparts for tribes in daily SWM planning.

Thus, tribes face a disadvantage compared with conventional communities. Conventional communities have established relationships with each other through formal state/county /city hierarchies. They are not vying for the same piece of land; their responsibilities to regional peoples are set. And they share the same culture and values. They don't risk their status attempting to strengthen informal bonds¹⁸⁵.

Clarification of SWM Responsibilities

The lack of regional relationships is disadvantageous to tribes. Recall from Chapter 5, the morass that is jurisdiction over non-Indians and fee land. SWM program planning throughout the reservation is problematic as a result.

The ramifications are enormous, especially for tribes with larger reservations. For example, a non-Indian community on one reservation was regularly using a remote ravine to dispose of their wastes¹⁸⁶. The tribe only learned of the situation through a regional newspaper. Either the county knew about the dump and its later cleanup, or it didn't, and is guilty of a poor job in monitoring where 500 county residents were disposing their wastes. In either case, if the tribe had an established relationship with its local government SWM counterpart, remedial action could have been carried out.

The lack of a working relationship also causes difficulties when an awareness of the problem exists. Another tribe is dealing with a relatively large amount of open dumping on a road with both fee and trust land that leads out of an incorporated non-Indian community¹⁸⁷. The tribe wants the city to take enforcement action and clean up the dumping. But it hasn't asked them; it doesn't want litigation, for reasons described in the last chapter. And there is no channel to talk to city officials. Because the outside is involved, the SWM manager needs authority from the Tribal Council to set one up. But Council members are busy running a nation, and several are reluctant to work with the city-- some from jurisdictional wariness, and others for diplomatic issues.

Regional Planning and the Rejected County

Involvement with outside issues, diplomacy problems, and no infrastructure to establish a working channel explain the Chapter 3 puzzle of the tribe that rejected county alternatives. The tribe also believes that attending county SWM meetings is not worthwhile because county planning does not concern it¹⁸⁸.

With no relationship, regional planning for SWM and other matters is conducted without tribal input. Projected tribal use of regional landfills, MRFs, and collection and hauling services will be unknown, and well might be guessed to tribal and regional disadvantage. Priorities for future regional facilities and services can not be established. And tribes will not be privy to county plans, a

potential death knell for tribal SWM plans, particularly for SWM economic ventures. Again, because of scale, to make a facility or service economical, typically tribes need to attract regional customers. But if competing alternatives are unknown, regional customers cannot be depended on. One tribe had been considering over a year the idea of constructing a MRF for their region¹⁸⁹. The location was ideal, and the economics were favorable. But in the meantime a neighboring city proceeded with their own plans. The County governments knew, but the tribe didn't, wasting SWM resources and effort.

Taking Advantage of County Services

Another problem with the lack of a local government relationship is missed opportunities for county services¹⁹⁰. The tribe that rejected the county provides another good example. It can't afford a recycling or hazardous waste program, but it isn't using the county's either. The circumstance is not unique. The majority of counties have household hazardous waste programs because they are part of a state that has been developing a funded solid waste program for years¹⁹¹. But most tribes do not have household hazardous waste programs yet because of scale, funding, and program underdevelopment. Further, when tribes are isolated as community and organization, awareness of useful commercial SWM businesses such as scrap metal dealers can be forfeited¹⁹².

6.7 INSTITUTIONAL DIFFERENCES: THE ROLE OF FEDERAL GOVERNMENT INSTITUTIONS

Both [IHS and EPA] are claiming the authority to regulate solid waste and underground storage tanks on the reservations, but neither of them wants the responsibility for the cleanups. So they are going to be out there trying to bust the tribes, make the tribes pay for it with their meager resources...So the tribes are getting whipsawed out there.

-- Congressional testimony of Kevin Gover, representing Pueblo of Pojoaque¹⁹³

Local communities are not the only outside bodies with which tribes deal in their SWM programs. Tribes interact with federal government institutions as well. But while interaction with non-Indian communities can be voluntary, interaction with the federal government is not. So institutional interaction is yet another area where tribes can face difficulties in their SWM that do not exist for conventional communities. The IHS and BIA are not present in the conventional setting. And while the EPA is, it has an "outsidedness" for tribes that doesn't exist for their conventional counterparts.

More Uncertainty: The Role of Roles

Mr. Thomas: The BIA isn't familiar with how many [tribal environmental programs] there are?

Mr. Farris: No. I don't have any numbers on how many tribes have their own environmental programs and how many individuals they have on those programs and what disciplines they have; no.

Mr. Thomas: Then just one final questionwho do you think is the agency in charge of this issue?

Mr. Farris: In charge of?

Mr. Thomas: The issue of open dumps or underground leakage.

Mr. Farris: Well, I think EPA has the regulatory activity, and BIA has a general trust relationship, and IHS has the--

Mr. Thomas: So nobody is in charge.

Mr. Farris: Well, there is a --

Mr. Thomas: Sorry. I think I get the picture. Thank you.

-- *Congressional hearing, Congressman Craig Thomas and George Farris, chief, Division of Environmental Services, BIA*¹⁹⁴

The three agencies primarily involved at the federal level with tribal SWD are the EPA, BIA, and IHS. Depending on the circumstance, the Department of Housing and Urban Development (HUD) also can be involved¹⁹⁵. The formal structure and assigned responsibilities of the four agencies are described elsewhere, and will not be examined further here¹⁹⁶. What is of greater interest in identifying obstacles to tribal SWM programs is the often ambiguous, overlapping, and variable nature of the institutional apparatus set up to support these programs.

Until we as Federal agencies can figure out exactly what we are doing and how we relate to one another, it has got to be confusing for the tribes in dealing with us as Federal agencies.

-- *Bill Pearson, Indian Health Service*¹⁹⁷

The uncertainty and absence of specifically designated agency responsibilities was a chief reason Congress labeled the federal role in tribal SWM as being "severely deficient"¹⁹⁸. Without clear roles, finding program assistance and funding can be an exasperating experience, leading to wasted effort, unused assistance, and a lack of motivation for carrying out a sound program.

Nature of Relationships between Federal Agencies and Tribes

The squeaky wheel gets the grease

--*IHS Area Office Staff Engineer*¹⁹⁹

Regardless of their ultimate definition, the static federal agency hierarchical structure and roles don't fully explain the true nature of these agencies' effects on tribal SWM. Work in the field of Institutional Analysis confirms the nature of relationships that are formed by the agencies, and the allegiance of their staff-- why they do what they do-- are key factors as well²⁰⁰. So like the tribal organization itself, there are formal and informal structures that affect an institution's effectiveness and impact.

The nature of relationship between a tribe and federal agency can range from close, to something akin to a cold war, where only mandatory contact is initiated by either side²⁰¹. Communication can be so infrequent that agencies are ignorant of the appropriate tribal contact person²⁰². But contact is important because tribes derive much of their technical and funding assistance from agencies.

What really made the [RCRA regulation] program work was the development of personal relationships with the EPA representatives so that it became clear that there were common goals and interests.

--*Richard DuBey, Attorney, Puyallup Tribe*²⁰³

Further, while the level of assistance given to tribes is set to some degree, agency personnel have some discretion in terms of which tribes they help. A significant amount of hostility, dysfunction, and/or favoritism appears to exist in informal agency-tribe relationships. As a result, what, how often, and how much assistance tribes receive is affected.

Perceived Agency Favoritism

They each have their favorites they like to help.

--BIA staff person, referring to IHS, BIA, and EPA personnel²⁰⁴

[Its] not easily answered. I doubt there's somebody still alive who can tell you that.

Mike Reed, BIA official, in reference to why some tribes get more funding than others²⁰⁵

That agencies appear to have "favorite" tribes is common grist at tribal conferences, and a number of anecdotes appear to back the claim²⁰⁶. Several reasons exist for assistance to be given when it is seemingly not called for, or better used elsewhere. First, with limited resources and generally understaffed programs, it is common among aid organizations to respond more readily to those communities or persons that insist on help²⁰⁷.

Then too, following the federal policy of tribal self determination, EPA, BIA, and IHS may not initiate help or assistance, but wait for tribal requests²⁰⁸. The strategy is a common one for aid agencies, based on the notion that an interested community is more likely to follow projects through²⁰⁹. But miscommunication can occur so the tribe never requests assistance²¹⁰. In one case, a reservation IHS office had the resources ready to clean up the tribe's open dumps, and waited for tribal request to do so. Yet, while the tribe was applying to EPA for assistance, it was unaware of the IHS aid, and never approached the office²¹¹.

Another circumstance that might lead to an appearance of favoritism is the level of program infrastructure²¹². In one survey, 40 of 41 tribes not receiving federal environmental funding did not have technically trained staff-- suggesting an underdeveloped program²¹³. People tend to want to work with people they know²¹⁴-- and where they can be effective²¹⁵. When the wrong person is contacted, or their tie to SWM is vague, communication is difficult because good interaction depends on clearly defined roles for both parties²¹⁶. Where agencies are able to instigate and keep contact with the appropriate person in the tribe, interaction is facilitated, and ongoing interaction appears to be a key to successful tribal environmental programs²¹⁷. Agency staff spend less time dealing with the bureaucracy of contacting, and more time implementing their project. A more established contact in turn can make future assistance more likely because agency staff are familiarized and comfortable with the tribe's program²¹⁸.

Tribal Choices

Tribes may choose to not work with one or all of the agencies because of perceptions that the agency will be of no assistance, whether from intent or from lack of staff or funding²¹⁹. Additionally, desires for autonomy or isolation, and/or wariness of EPA enforcement, and BIA or IHS bureaucracy may dissuade tribes from seeking agency help²²⁰.

Generally, however, tribes seek federal funding and/or technical assistance. But when business interactions are satisfactory, an organization tends to stick with that relationship to the exclusion of other options²²¹. Thus, tribes may choose to work more heavily with one agency or another²²². In fact, they may not know the contacts in the agencies that they do not make use of²²³. Agency lists of tribal contacts for environmental matters vary considerably, indicating a tribal preference²²⁴. Note in some cases where contact names conflict, high personnel turnover is to blame. In others, one or more of the agencies have been out of contact with the particular tribe for a year or longer.

Recall the holistic culture is very high context; relationships with outsiders are more difficult to form, and familiarity is valued highly. So, from a cultural perspective as well, once an agency is "chosen", and a relationship established, the choice to continue it is likely²²⁵. And if a relationship is not formed, it is likely to stay that way unless necessity dictates otherwise. Unfortunately, again, aid organizations often assist the most visible clients, and where a working relationship exists already²²⁶. Perhaps such a practice exists because of greater reliability of successful projects. Still, the situation begs the question of whether tribes considered more "traditional"²²⁷ are excluded from assistance opportunities due to cultural bias.

Tribal Circumspection of EPA

...before we delegate [RCRA programs] to the States, and in this case the tribes, we want to make sure the programs are going to be run in a way that mirrors how EPA would want to run them...

-- *Richard McAllister, EPA*²²⁸

I file those in the circular file [the wastebasket].

--*Tribal Environmental Director, in referring to EPA memos*²²⁹

According to a 1994 survey, some 220 of 545 tribes do not have contact with EPA²³⁰. Part of the poor contact record may be because EPA is a regulatory agency, and enforcement action is feared²³¹. Also, EPA is not incorporated into larger Indian Country culture as, to some extent, are the Indian-specific IHS and BIA. EPA Tribal Program staff deal regularly with tribes, but they serve only as liaisons and grant administrators, and generally deal only with tribes receiving GAP grants. Technical enforcement and assistance is handled generally through the same branches, and by the same personnel, that handle states. So EPA can be considered very much an outsider. And outside agencies, just like outside communities and governments, can represent a threat to tribal integrity for many of the same reasons. The overwhelming majority of EPA staff are non-Indian, and non-Indian staff in any agency can present practical problems because communication styles different from tribal personnel may result in poor understanding of each other's position²³².

Possibly because contact is limited and few EPA personnel are Indian²³³, grievous misunderstanding of tribes can arise as well. For example, in addressing a tribal environmental conference, one EPA official noted that tribes were "just like other rural communities"²³⁴. Another noted at a workshop that tribes "had better darn well come into [RCRA] compliance, if they know what's good for them, they're breaking the law".²³⁵ Both comments suggest a poor grasp of how important tribal sovereignty is to tribes²³⁶. And that misunderstanding can lead to mistrust on the part of tribes in wanting to work with EPA. In addition, it is widely held that EPA materials are irrelevant to tribal SWM situations and needs²³⁷. EPA publications and training are designed and published at the national level, and targeted for its average constituent-- a conventional non-rural, non-tribal, community. While unintentional, the circumstance can only exacerbate wariness of working with EPA. But tribes miss a number of assistance opportunities if they don't work with EPA

Technocracy of IHS

Generally with all programs, [IHS] want[s] to study the situation. And I think Tribes have been studied and studied, and the problems have been studied but no one wants to take responsibility. Open dumps need to be cleaned up now, and [Congress should] require IHS to cleanup open dumps immediately.

-- *Joyce Martinez, aide to Governor and Tribal Council, Pueblo of Tesuque*²³⁸

One problem in working with the IHS may be that its charge is not precisely an environmental one; it is health engineering²³⁹. Where sanitation facilities have already been built, formal contact may be limited because IHS is not responsible for operation and maintenance; tribes are. So regular relationships may not be established. With The Open Dump Cleanup Act of 1994, IHS was given responsibility to develop SWM plans and conduct site inventories-- but, again, only at tribal request²⁴⁰.

One circumstance noted by some tribal personnel is that IHS is not an advocacy agency²⁴¹. Its charge is to fix things, not to integrate tribal culture into the solution process. Those working with SWM are engineers by trade and carry out conventional engineering studies. For example, it is common practice to design a transfer station based on a 4 lb/d-capita waste generation rate²⁴², but, due to a lack of resources, desire, or training, not find out whether the station will be used by the community. Because they are responsible for highly technical work, IHS staff may choose to study a situation in great detail before acting, and funding for study recommendations may be delayed²⁴³. The result is that tribes can perceive IHS's response to tribal problems as too technical, and not practical enough. A last point is that several tribes have taken advantage of '638' and formed, or hired, their own engineering units to take the place of IHS²⁴⁴. While self-determination may be the goal, it is unclear whether tribal dissatisfaction with IHS is a motivating factor as well.

BIA Historical Baggage and Trust Issues

The BIA is an advocacy agency. A high percentage of employees are Native American. But in terms of working with SWM issues, the agency has its own peculiar problems. First, its charge is broad, and SWM is inferred only by BIA's responsibility to protect trust lands²⁴⁵. Thus, SWM may be designated a low priority. Second, BIA's charge is to uphold the trust responsibility, so it covers trust land only. Where non-trust land is involved, as it often is in SWM issues, direct authority to act is either problematic or absent.

Third, BIA is saddled with the historic baggage of Federal Indian Policy. It was BIA who carried out policies such as forced schooling until the 1960's²⁴⁶. And BIA bribery, treachery, and abuse were rife until the reforms of the 1920's and 30's²⁴⁷. Recollect that the tribal holistic culture sees the past as essentially present. So there is an inherent hostile association with BIA for many Indians²⁴⁸. And a prevalent view exists that BIA is too entrenched or meddlesome in general tribal affairs²⁴⁹. Thus, even though SWM assistance is voluntary and separate from history and bureaucracy, a significant amount of resentment exists against the agency as a whole. Many tribes are trying to lessen their dependency as well, so they may choose to minimize their contact, and forego available assistance.

Interagency Dynamics

...we pulled all our tribes together in the mid-1980s. One of the things the tribes told us when we got together was "You talk about water, and IHS talks about water, and BIA is doing water and you are all supposed to be doing solid waste. Do you ever talk to each other?" And of course we had to say "Well, no".

-- Steve Dodge, EPA Region V²⁵⁰

Because their formal roles overlap and/or complement one another, a 1991 "Memorandum of Understanding" stipulates agency cooperation when possible as a goal. But coordinated assistance is rare²⁵¹. Tribes have asked Congress that the agencies cooperate, and the issue is brought up

repeatedly at tribal conferences and workshops²⁵². It is unclear why cooperation is infrequent, although different agency agendas resulting from the above discussed factors, as well as different institutional allegiances described below, likely play a part. Cooperation varies between regions. For example, in one region a SWM working group of IHS, BIA, EPA, and HUD meets each quarter and the four have cooperated on several dump cleanup operations²⁵³. But in another region, the four met only twice in a four year period²⁵⁴. An, as yet, untried cooperative effort between BIA, EPA, IHS, and several other agencies and departments was launched in mid-1998 as the national Tribal Solid Waste Interagency Workgroup²⁵⁵. Tribal proposals for 1.6 million dollars in funding for open dump cleanup demonstration projects were solicited by EPA under the auspices of his group beginning Spring 1999²⁵⁶.

Nature of Agency Allegiances and Purpose

They don't have their act together

--EPA staff person referring to IHS

They're no help at all

--IHS staffer referring to BIA

What would you want to work for them for?

--BIA staff person referring to EPA

At the core of the problem in coordinating efforts and clarifying roles is the fact that each agency serves a different purpose and has a different allegiance. EPA is the regulator, BIA the advocate, and IHS the technician. The BIA is under the DOI. The IHS is under the direction of the Public Health Service (PHS), is a uniformed (commissioned) service under the direction of the Surgeon General, and originally part of the Department of Defense. The EPA is its own agency, with sub-Cabinet status. And HUD has Cabinet status.

Different allegiances result in different motivations for carrying out a job, whether to carry out a job, and how to carry it out²⁵⁷. Anecdotes from tribal and agency staff indicate that the four agencies here are no exception. That can be advantageous for tribes. For example, both BIA and IHS staff in contact throughout this study adamantly refused to divulge any tribe's SWM (or other environmental) problems to EPA. BIA staff stated their role as a tribal advocate prevented them, and IHS staff stated their tribal relationships would be compromised, and their ability to perform their work would suffer. Both believed it was a tribe's prerogative to choose EPA involvement.

But different allegiances can be disadvantageous too. Again, they might be a key factor in explaining why more cooperation does not exist. Diverse motivations can mean different specific goals, all of which may not be accommodated in a single project²⁵⁸.

Conflict Within Agencies

I don't think this has to be new money at all. I think it can come out of money that is already being appropriated to EPA. They just need to be knocked in the head and told to spend it on the reservations.

-- Kevin Gover, rep. Pueblo of Pojoaque, in reference to establishing a separate tribal leaky underground storage tank fund²⁵⁹

Within the agencies themselves, allegiance can bode poorly for tribes. For example, BIA's part in the DOI is to protect trust lands for use by Indians. But that charge conflicts directly with the mission of DOI to protect lands for the public at large²⁶⁰. The BIA is trying to pull lands out of public use (by converting them to trust land).

A conflict also exists for IHS. The Department of Health and Human Services is a health organization, not an environmental engineering one. Reservations are the only communities where sanitary facility construction is a responsibility. In conventional communities, by far the bulk of its constituency, it is municipal and county governments that hold that responsibility. In an organization run by health professionals, engineering needs may get short-shrift because of different perceptions on what is most important for tribal health. Also, erecting transfer stations is not sensational, and may not reap the same political benefits as battling diseases and quality of life issues the public-at-large is focused on.

EPA's mission is to protect the environment throughout the U.S., but with limited resources. They can affect more constituents by concentrating on the bulk of conventional communities, rather than on a tribe of 200 people. Where conflicts between the interests of tribes and local governments and/or states exist, EPA decision making may require compromise or circumspection on the problem-at-hand, to promote cooperation on other environmental issues.

I am troubled by...the fact that we seem to have two levels of communication here. We get one from the Federal agencies saying an entirely different list of accomplishments and the great things that they are doing, and then hearing from the grassroots where things are directly right there, the front line. This is not only absurd but very ludicrous. I mean I just can't believe this.

-- *Congressman Faleomavaega*²⁶¹

6.8 CONCLUSIONS

Not only does a *de facto* jurisdictional void exist on many reservations, an infrastructural gap exists as well. The resources and program expertise needed for SWM on reservations are as yet largely inadequate. A number of program factors exist that make it more difficult to carry out sound SWM. By and large, these factors persist because tribes are tribes; who and what they are, and the unique circumstances they face, result in program infrastructural problems. So, again, tribes are at a disadvantage in achieving their SWM goals compared to conventional communities. Note, it is not that tribes are incapable of good SWM, or that tribes can't or don't have programs equal or better to than conventional communities; they can, and some do²⁶². But they must overcome more obstacles to reach that level.

Thus culture, authority, and program organizational infrastructure all affect tribal SWM, and contribute to its problems. The situation that tribes face is distinguished from what conventional communities face by these factors. As a result, conventional SWM tactics can fail. In the next chapter, how each of the factors relate to each other, and how they can be incorporated into a workable tribal SWM model is examined.

¹ U.S. Senate, *Hearing on S. 720 to clean up open dumps on Indian Lands*, 103rd Cong., 1st Sess., Committee on Indian Affairs, Nov 3, 1993, Washington D.C., S. Hrg. 103-460, 1994.

- ² From Bee, R., "The predicament of the Native American leader: A second look", *Human Organization*, Vol. 49-1, 56-63, 1990.
- ³ See Handy, C., *Understanding organizations*, Penguin Books, Middlesex, England, 1981.
- ⁴ See for example, *ibid.*
- ⁵ See for example, Auberle, W., V. Masayesva, and P. Ellsworth, "Innovative education and training for tribal environmental professionals", *Proc. of 89th Annual Air and Waste Management Assoc. International Meeting*, Nashville, TN, Jun 23-28, 1996.
- ⁶ U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, Hearings before the 102nd Congress, Select Committee on Indian Affairs, July 29, 1991, S.R. 102-72, 1992.
- ⁷ Federal Power Commission v Tuscarora Indian Nation 362 U.S. 99 (1960), (Application to tribes of federal law was consistent regardless of whether tribes were explicitly included in the wording, based on tribes' status as dependent (and not independent) nations).
- ⁸ See for example, Bee, R., "Riding the paper tiger", in *State and reservation: New perspectives on federal Indian policy*, Castile, G. and R. Bee (eds.), Univ. of Arizona Press, AZ, 1992.
- ⁹ 25 U.S.C. §§ 450-451n, 455-458e (PL 93-638). Known informally as "638", a greater Indian role in their general affairs was promoted. Importantly, the federal government's previously ascendant role in tribal matters was acknowledged to have generally stultified tribal initiative and development of leadership skills.
- ¹⁰ Pommersheim, F., "Economic development in Indian Country: What are the questions?", *American Indian Law Review*, vol. 12, 1984.
- ¹¹ Madison, M., C. Burbee, and D. Crohn, *Solid and hazardous waste on California Indian Lands: A Review of Technologies, Law, Enforcement, and Resources*, Univ. of Calif., Div of Ag and Nat. Res., Waste Management Workgroup. Pub. No. 1, 1994.
- ¹² For example, Anderson, J. "Waste Merchants Target Reservations", *Washington Post*, Feb 22. 1991.
- ¹³ Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment: Site closure and management*, Bureau of Indian Affairs Report, Portland Area Branch, December 1996.
- ¹⁴ Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality and the implementation of the tribal amendments to the Clean Water Act*, National Indian Policy Center (NIPC), The George Washington Univ., Wash., D.C., 1995; Allen, M., "Native American control of tribal natural resource development in the context of federal trust and tribal self-determination", in Wells, R. (ed.), *Native American resurgence and renewal: A reader and bibliography*, The Scarecrow Press, Inc. Metuchen, NJ. 1994.
- ¹⁵ *Ibid.*
- ¹⁶ Tribal Solid Waste Training Needs Assessment Forum, Third National Tribal Conference on Environmental Management, Polson, Montana, May 21-23, 1996. For example, of 20 tribes attending a series of SWM workshops, none had a specific SWM branch, *Workshop on assessment of open dumping and solid waste management*

planning on Indian Lands, Indian Health Service, Red Lion Inn, Redding, Sacramento IHS Office, Sacramento, Double Tree Highland Resort, Rancho Bernardo, CA, Oct 10-11, 16-17, 22-23, 1996.

- ¹⁷ National Tribal Environmental Council, *National Tribal Environmental Review Final Report*, 1994.
- ¹⁸ In an informal survey of 24 tribes, only two had SWM ordinances. Neither included specific language on the variety of SWM circumstances that need regulation, particularly where non-Indians are concerned. Notes, *Workshop on assessment of open dumping*, *supra* note 16, and field notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- ¹⁹ In House of Representatives, Subcommittee on Native American Affairs of the Committee on Natural Resources, 103rd Congress, 1st Session, *Oversight hearing on abandoned and leaking underground storage tanks and open dump sites on Indian Reservations*, Oct 14, 1993, H.R. 103-50, 1994.
- ²⁰ Panel presentation, Annual Tribal Environmental Conference, EPA Region IX, Nov 1996.
- ²¹ Unpublished data for Institute of Tribal Environmental Prof., Northern Ariz. Univ., Flagstaff, presented by Auberle, W., "Innovative education and training for tribal environmental professionals", presented at the *89th Annual Air and Waste Management Assoc. International Meeting*, Nashville, TN, Jun 23-28, 1996. Also for example, at a series of SWM workshops held for California Area tribes, *Workshop on assessment of open dumping*, *supra* note 16, only two tribal representatives had more than 3 years of experience in environmental affairs. One of these, a non-tribal member was the only participant with a college degree in a science field. None had SWM backgrounds. The majority were beginning their first year in environmental management. Note inexperience refers to formal management of a modern wastestream. The majority of tribes historically have employed indigenous natural resource management techniques, and anthropology literature is replete with testimony to the environmental prowess of tribes in practicing sustainable living. Often the lack of expertise is cited as implicitly being within the context of (1) competing effectively in a market economy for resources, and (2) complying with federal regulatory requirements, both arguably unnecessary for safeguarding the environment, *per se*.
- ²² See for example, Bee, R., *The predicament of the Native American leader*, *supra* note 2.
- ²³ Discussion notes, *Workshop on assessment of open dumping*, and research notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- ²⁴ See note 21.
- ²⁵ Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- ²⁶ The technical knowledge lacking can be very basic. For example, in one large tribe, the newly appointed SWM manager did not realize that groundwater flows. Several tribal environmental managers come from business-related backgrounds, such as real estate, personnel, and accounting. Notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.; Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.

- ²⁷ Unpublished data for Institute of Tribal Environmental Prof., Northern Ariz. Univ., Flagstaff, presented by Auberle, W., "Innovative education and training for tribal environmental professionals", presented at the *89th Annual Air and Waste Management Assoc. International Meeting*, Nashville, TN, Jun 23-28, 1996; discussion notes for Native American Pollution Prevention Workshop, Apr 10, 11, D-Q Univ., Davis, CA, 1997.
- ²⁸ For example, comments by Bob Shelnett, EPA Region IX Circuit Rider, Oct 15, 1996 at *Workshop on assessment of open dumping, supra* note 16, and discussion notes, Annual Tribal Environmental Conference, EPA Region IX, Nov 1996.
- ²⁹ Panel presentation, Native American Environmental Protection Coalition, EPA Region IX, Nov 1996, Tribal Solid Waste Training Needs Assessment Forum, Third National Tribal Conference on Environmental Management, Polson, Montana, May 21-23, 1996. Time is also needed for effective enforcement procedures to be developed. For example, in one tribe, highly sophisticated in their Planning and Natural Resources Departments, the new SWM manager used for two years non-carbon paper to handwrite open dumping locations and what actions were taken. No locations or times were recorded. The information was useless for citations, and the only copy of the binder was misplaced.
- ³⁰ Commonly termed TERO (Tribal employment rights ordinance).
- ³¹ Leaders are expected to provide tribal members jobs. Bee, R., "To get something for the people: The predicament of the American Indian leader", *Human Organization*, Vol. 38-3, 239-247, 1979.
- ³² Indian Service Population and Labor Force Estimates, U.S. Dept. Interior, Bureau of Indian Affairs, 1995 (available at <http://www.doi.gov/bia/ifcons95.html>). Only 18 tribes have populations over 5,000.
- ³³ Data for reservation Indians is not readily available. A 35.5% high school dropout rate exists for Native Americans (on and off-reservation), compared with 22 percent for conventional communities. The figure is significantly higher for reservation Indians. For example, the Morongo Tribe had an average 85 percent dropout rate (Magagnini, S. "For some tribes, casinos fulfill American dream", *Sacramento Bee*, July 2, 1997, A1, A10-12). Just 9.4 percent of Native Americans hold B.S. degrees, compared with 22 percent of caucasians. Only 29 percent of Indians entering a four-year college matriculate, compared with 53 percent for the national average. Wells, R., Jr., "Transforming Native American education: The long road from acculturation to cultural self-determination", in Wells, R. (ed.), *Native American resurgence and renewal, supra* note 14, and U.S. Bureau of the Census, 1990 Census of Population, *Characteristics of American Indians by tribe and language*, 1990, CP-3-7. Note obtaining reliable statistical average data for reservations is difficult as the U.S. Census does not distinguish between "urban" Native Americans and the approximately one-third of reservation Native Americans. BIA and IHS track limited demographical information, possibly due to great expense associated with a full census. No centralized inter-tribal database exists.
- ³⁴ See Bordewich, F., "Revolution in Indian Country", *American Heritage*, 34-46, Aug 1996.

- ³⁵ In U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- ³⁶ Tribal Solid Waste Training Needs Assessment Forum, Third National Tribal Conference on Environmental Management, Polson, Montana, May 21-23, 1996.
- ³⁷ *Ibid.*, Auberle, W., V. Masayesva, and P. Ellsworth, *Innovative education and training for tribal environmental professionals*, *supra* note 5; Zender, L., "Solid waste disposal on Indian Reservations: An overview", *Proc. of the 89th Annual Conference of the Air and Waste Management Association*, Nashville, Jun 1996.
- ³⁸ For useful summary of motivation theory see Handy, C., *Understanding organizations*, *supra* note 3, or for expanded discussion see Vroom, V.H. and E. Deci (eds.), *Management and motivation*, Penguin, New York, 1970.
- ³⁹ Maslow, A. (1954), *Motivation and Personality*, Harper and Row, New York, 1954. Maslow's 'Theory of Needs' has attained wide recognition and status. Subsequent authors have suggested additional needs, see note above for references.
- ⁴⁰ The amount of motivation for an act depends on how important the need is (salience), the expectation that the act and its intended outcome will be accomplished (expectancy), and how well the outcome is expected to satisfy the need (instrumentality). For simplification, the text discussion lumps together instrumentality and expectancy. See note 38 for references.
- ⁴¹ Vellinga, M., "Many Indian casinos targeted for closure", *Sacramento Bee*, May 14, A4, 1998.
- ⁴² For example, the Nevada Indian Environmental Coalition challenged the application of RCRA to tribal lands, Madison, M., C. Burbee, and D. Crohn, *Solid and hazardous waste on California Indian Lands*, *supra* note 11.
- ⁴³ Mattie Blue Legs et al. v. United State Environmental Protection Agency, et al. Civ. No. 85-5097, Slip Opinion (D. South Dakota, Sep. 3, 1987).
- ⁴⁴ 42 U.S.C. § 6903(13).
- ⁴⁵ Backcountry Against Dumps et al. v. EPA.(1996), District of Columbia Circuit No. 95-1343, U.S.C. § 6903(13).
- ⁴⁶ See for example Deloria, V., Jr., and C. Lytle, *The nations within: The past and future of American Indian sovereignty*, Pantheon, New York, 1984.
- ⁴⁷ From U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- ⁴⁸ For example, see statement of Mervyn Tano in U.S. Senate, *S. Hrg. 103-460*, *supra* note 1, and statement of Bobby Whitefeather in House of Representatives, *Hearing on S. 720, To clean up open dumps on Indian Lands, and for other purposes*, Subcommittee on Native American Affairs of the Committee on Natural Resources, 103rd Congress, 2nd Session, July 26, 1994, H.R. 103-102, 1994.
- ⁴⁹ For example, see tribal testimonies in U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6; House of Representatives, *H.R. 103-102*, *supra* note 48; U.S. Senate, *S. Hrg. 103-460*, *supra* note 1.
- ⁵⁰ U.S. Senate, 105th Cong., 1st Sess., *Oversight hearing of the President's budget request for the Bureau of Indian Affairs and the Indian Health Service*, Feb 26, 1997, S. Hrg. 105-65, Pt. 1 and Pt. 2, U.S. Govt. Prt. Off., Wash., D.C., 1997. Additionally, 1.8 billion

in 1997 dollars is required to address the backlog in sanitation facility construction and improvement projects.

51 Indian Service Population and Labor Force Estimates, U.S. Dept. Interior, Bureau of Indian Affairs, 1995 (available at <http://www.doi.gov/bia/ifcons95.html>), and U.S. Bureau of Census 1990 Census population, characteristics of American Indians by tribe and language, 1990 CP-3-7.

52 Indian service population and labor estimates, U.S. Dept. of Int., Bureau of Indian Affairs, 1995. Note, more current or specific data is unavailable. The U.S. Census does not distinguish between the Native American population as a whole, and the approximately one-third of Native Americans living on reservations.

53 Discussion notes, Affiliated Tribes of Northwest Indians Winter Conference, Natural Resources Committee, Spokane, Feb 12- 14 1994.

54 This situation is seen as similar to a developing country scenario where developed countries can take advantage of the situation by exploiting resources in a manner that their environmental science prowess would prevent them from doing in their own country. Allen, M., *Native American control of tribal natural resource development*, *supra* note 14.

55 See for example, Curtis, S., "Cultural relativism and risk assessment strategies for federal projects", *Human Organization*, vol. 51-1, 65-70, 1992.

56 See generally for example, Douglas, M., and A. Wildavsky, *Risk and culture*, Univ. of Calif. Press, Berkeley, 1982.

57 See Indigenous Environmental Network, *Risk assessment*, Bemidji, MN (e-mail ien@igc.apc.org); O'Brien, M., "An alternative to ecological risk assessment: Traditional Native American approaches to ecosystems", *Society for Ecological Restoration 1995 International Conf.*, Seattle WA., Sep 14-16, 1995; Curtis, S., *Cultural relativism and risk-assessment strategies*, *supra* note 55.

58 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.

59 Discussion notes for *Workshop on assessment of open dumping*, *supra* note 16. Attendees were given an exercise that required them to rank clean up priority of open dump sites with one adjacent to elder berry picking grounds.

60 The contaminated wetland referred to was the site of an Indian massacre in the 1850's. Because its contamination was considered spiritual as well as physical, its full cleanup was considered to be possible only with a formal U.S. apology. Discussion notes for Ecological Assessment Meeting, sponsored by D-Q Univ. and UC Davis, hosted by Robinson Rancheria, Oct 5, 1996.

61 For a thoughtful summary on role theory, see Handy, C., *Understanding organizations*, *supra* note 3.

62 The prevalence of the circumstance is indicated by the estimated 36 percent of tribal environmental contacts that actually work for a structured "environmental program". Further, of those 36 percent, few tribes would have staff devoted solely to SWM, responsibilities would include other environmental areas, namely water and air quality.

- Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- ⁶³ Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.
- ⁶⁴ Usefulness and goal achievement are two needs that individuals try to fulfill. See note 38 for references.
- ⁶⁵ Bee, R., *Riding the paper tiger*, *supra* note 8, for theory on bureaucratic inertia in general, see Bennis, W., *Organization development: Its nature, origins, and prospects*, Addison-Wesley, Reading, MA, 1969.
- ⁶⁶ Handy, C., *Understanding organizations*, *supra* note 3.
- ⁶⁷ Zender, L., and G. Tchobanoglous, "Assessment of illegal dumping of MSW in rural communities: procedure and evaluation" *Proceedings of the Eleventh International Conference on Solid Waste Technology and Management*, Philadelphia, Nov 1995, and Solid Waste Association of North America, *Rural municipal solid waste management series*, Silver Spring, MD, 1996.
- ⁶⁸ In U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- ⁶⁹ See *ibid*.
- ⁷⁰ Only 58 percent of federally recognized tribes received any federal funding for general environmental programs during the four year period 1990 to 1994. Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14. More current data is not readily available, but the percentage matches with the number of tribes currently funded by GAP (Personal communication, Jacobs, S., staff member, Region IX Tribal Program, May 11, 1999). However, it is clear the disparity in environmental and health funding extends beyond simply program development and facility construction. Federal government healthcare expenditures for non-Indians in FY 1996 were \$3,900 compared with IHS per capita expenditures of \$1,578, U.S. Senate, *Oversight hearing of the President's budget request*, *supra* note 50.
- ⁷¹ See statement of Steve Dodge, EPA, Region V, in U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- ⁷² Panel presentation, Annual Tribal Environmental Conference, EPA Region IX, Nov 1996.
- ⁷³ National Public Radio, *All Things Considered*, Series on reservation problems, broadcast Jul 15, 1998.
- ⁷⁴ Rather than being due to ineptitude, lack of motivation, or inexperience, the Indian sense of time has been suggested as a valid cultural reason that "conventional" deadlines are commonly missed, *Workshop on assessment of open dumping*, *supra* note 16. See Chapter 4. Note a good deal of supportive evidence comes from Native American education literature, where Indian children subjected to conventional classroom settings generally are poorer in meeting homework deadlines, class schedules, and attendance. See for example, Cleary, L. and T. Peacock, *Collected wisdom: American Indian education*, Allyn and Bacon, Boston, 1998. In the workplace, see for example, Bigart, R., "Indian culture and industrialization", *American Anthropologist*, vol. 74, 1180-1188, 1972. An electronics plant achieved financial success by incorporating Sioux cultural norms through flexible scheduling and piecework.

- 75 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*,
supra note 14.
- 76 Ibid.
- 77 See text above, many tribes do not have SWM programs.
- 78 A first time award for two years is typically set at the minimum amount of \$75,000 per
year, enough in most cases to cover the costs of just one position. Lisa Penaska, EPA
Region IX, presentation at Ecological Assessment Meeting, sponsored by D-Q Univ.
and UC Davis, hosted by Robinson Rancheria, Oct 5, 1996.
- 79 U.S. Senate, *Oversight hearing of the President's budget request*, *supra* note 50.
- 80 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*,
supra note 14. A cited example is the or FY 1993 award of a \$65,000 multi-media grant
(since replaced by GAP) to the Mashantucket Pequot Tribe, with reported earnings of \$1
million per day. Other tribes in the Region received nothing.
- 81 In House of Representatives, *H.R. 103-102*, *supra* note 48.
- 82 U.S. Senate Select Committee on Indian Affairs, *Indian Development Finance
Corporation Act, Mar 22, 1988*, 100th Cong., 2nd Sess., S.R. 100-306, U.S. Govt. Prt.
Off., Wash., D.C., 1988. The need for the DOI to approve or oversee contracts for
potential SWD fundraising ventures may also dissuade investors. However, in other
cases, the presence of the BIA and hence, of the federal government, may reassure
concerned investors.
- 83 Ibid.
- 84 Ibid. However, see Bee, R., *The predicament of the Native American leader*, *supra* note
2, for argument that instability of tribal governments does not produce a poor business
climate, but only the perception of one, thus still making it difficult to secure funding.
Several scholars argue that factionalism and conflicts within tribes are due to
historical/cultural factors, as well as enforced political systems and groupings brought
about by the reservation and federally-designated tribe creation. See for example,
Cornell, S. "The transformation of tribe: organization and self-concept in Native
American ethnicities" *Ethnic and Racial Studies* 11-1, p 21-41, 1988 and Jarvenpa, R.,
"The political economy and political ethnicity of American Indian adaptations and
identities", *Ethnic and Racial Studies*, Vol. 8-1, 29-48, Jan 1985.
- 85 In Bee, R., *The predicament of the Native American leader*, *supra* note 2.
- 86 See U.S. Senate Select Committee on Indian Affairs, *Indian Development Finance
Corporation Act*, *supra* note 82.
- 87 Statements of Bill Pearson, Indian Health Service, and Mervyn Tano, Council of Energy
Resource Tribes in U.S. Senate, *Workshop on solid waste disposal on Indian Lands*,
supra note 6.
- 88 Zender, L., and G. Tchobanoglous, *Assessment of illegal dumping of MSW in rural
communities*, *supra* note 67, Zender, L., and G. Tchobanoglous, *Manual on open
dumping assessment*, *supra* note 13.
- 89 Cohen, F., *Felix Cohen's handbook of Federal Indian law*, Strickland, R. (ed.),
Charlottesville, VA, 1982.
- 90 Ibid.

- ⁹¹ Tchobanoglous, G., H. Theisen, and S. Vigil, *Integrated solid waste management: Engineering principles and management issues*, McGraw-Hill Inc., 1993.
- ⁹² For example, only 4 of 20 tribes in attendance at the *Workshop on assessment of open dumping*, *supra* note 16. made some use of computer databases or electronic information gathering. See generally for example, U.S. Senate, *Oversight hearing of the President's budget request*, *supra* note 50. Also see for example, Pommersheim, F., *Economic development in Indian Country*, *supra* note 10.
- ⁹³ Ibid.
- ⁹⁴ From *Americans Before Columbus*, American Broadcasting Company, Aug - Oct 1971, quoted in Nabokov, P. (Ed), *Native American testimony, a chronicle of Indian-White relations from Prophecy to the Present, 1492 - 1992*, Penguin Books, New York, 1991.
- ⁹⁵ See for example, Etzioni, A., "Compliance, goals, and effectiveness" in *Classics of organization theory*, Shafritz, J. and J. Ott (eds.), Dorsey Press, Chicago, 1987.
- ⁹⁶ Cornell, S., and J. Kalt, "Reloading the dice: improving the chances for economic development on American Indian reservations", in *What can tribes do? Strategies and institutions in American Indian economic development*, Cornell, S., and J. Kalt (ed.), American Indian Studies Center, Univ. Calif., LA, 1993.
- ⁹⁷ A free-of-charge open dump assessment and closure study was offered to the tribe for purposes of obtaining federal funding through Open Dumps Cleanup Act. The delay cost the tribe consideration as a demonstration project tribe. Notes for *Manual on open dumping assessment*, *supra* note 13.
- ⁹⁸ Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality* (in reference to general environmental or water quality material), *supra* note 14. Also, for example, a regional IHS office set out letters to all tribes stating that it would conduct open dump inventories and compile SWM plans for those requesting it. Only a handful responded. Yet, when environmental representatives from 20 of these tribes were queried at *Workshop on assessment of open dumping*, *supra* note 16, only three were aware of the assistance offer.
- ⁹⁹ Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.
- ¹⁰⁰ See Cornell, S., *The transformation of the tribe*, *supra* note 84.
- ¹⁰¹ Troster, R., "Mind sets and economic development on Indian reservations", in *What can tribes do? Strategies and institutions in American Indian economic development*, Cornell, S., and J. Kalt (ed.), American Indian Studies Center, Univ. Calif., LA, 1993.
- ¹⁰² Tonnies, F., *Community and association (Gemeinschaft und gesellschaft)*, translated and supplemented by C. Loomis, Routledge and Paul, London, UK, 1955.
- ¹⁰³ Stoneall, L., *Country life, city life: Five theories of community*, Praeger, N.Y., 1983.
- ¹⁰⁴ Ibid.
- ¹⁰⁵ While rationality can connote good judgment, classically, rational behavior means simply that emotional and personal arguments are *assumed* ignored in favor of analyzing what actions an individual should take to gain themselves the most advantage. It should be recognized that much recent literature and thought has examined the premise that rational, also termed positivist, behavior and thought is objective. Because of this premise, what is termed "rational thinking" has been construed as generally more

"equitable", "scientific", and "valid". However, Post-Positivism, Feminism, and American-Indian scholarly work demonstrates that cultural and gender biases are inherent in thought processes, so that "rational thought" is only sensible within the context of the conventional western culture that defined it. See for example, S.S. Rixecker, "Expanding the discursive context of policy design: A matter of feminist standpoint epistemology", *Policy Sciences*, vol. 27, 119-142, 1994.

¹⁰⁶ Stoneall, L., *Country life, city life*, *supra* note 103.

¹⁰⁷ *Ibid.*

¹⁰⁸ Note the two community types have been used to compare the Iroquois and western society in Venables, R., "Iroquois environments and 'We the People of the United States', gemeinschaft and gesellschaft in the apposition of Iroquois, federal, and New York State sovereignties", in *American Indian environments: Ecological issues in native American history*, Vecsey, C., and R. Venables (eds.), Syracuse Univ. Press, NY, 1980.

¹⁰⁹ Max Weber's work has been reprinted in numerous publications. See for example, Weber, M., *Economy and Society*, Univ., of Calif. Press, Berkeley, 1978.

¹¹⁰ The separation of religion and spirituality from institutional governance of people's actions. See Huntington, S.P., "The west: Unique, not universal" *Foreign Affairs*, 28 - 46, Nov/Dec 1996.

¹¹¹ A classic large-scale example of "society" replacing "community" occurred during the Industrial Age in Europe and the United States. As work became more and more segmented, specialized, and localized, the majority of people left their historic homes and extended families, and formed impersonal utilitarian relationships to replace the traditional support structures they had left.

¹¹² Weber, M., *Economy and Society*, *supra* note 109. For discussion particular to Indian tribes and Bureau of Indian Affairs, see also Bee, R., *Riding the paper tiger*, *supra* note 8.

¹¹³ The power is termed "rational" because it is defined as being impersonal and thus "logically" based (see note 105), and "legal" primarily because it is written into a standard set of rules and procedures with the force of [corporate or governmental] law behind it.

¹¹⁴ See Bee, R., *Riding the paper tiger*, *supra* note 8; Trospen, R., *Mind sets and economic development on Indian reservations* (the conventional community here is referred to as the "dominant paradigm"), *supra* note 101, and generally for example, Butler, G., *Organization and management*, Prentice Hall Intl., Englewood Cliffs, NJ, 1986.

¹¹⁵ In U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.

¹¹⁶ Weber, M., *Economy and Society*, *supra* note 109.

¹¹⁷ Pommersheim, F., *Economic development in Indian Country: what are the questions?*, *supra* note 10

¹¹⁸ Brandfon, F., "Tradition and judicial review in the American Indian tribal court system", *UCLA Law Rev.*, vol. 38, 991-1017, 1991. Note there are several exceptions, such as the Apaches. Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96.

¹¹⁹ Cornell, S. *The transformation of tribe*, *supra* note 84.

- ¹²⁰ See for example, discussion of White Mountain and Mescalero Apache Tribes in Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96.
- ¹²¹ Note too that consensus on decision making historically could define the social group. Those who disagree are outcast, and perhaps form a new group. Venables, R., *Iroquois environments and 'We the People of the United States'*, *supra* note 108.
- ¹²² Cornell, S., *The transformation of tribe*, *supra* note 84.
- ¹²³ For discussion on need of traditional tribal cultural values in community planning, see Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96.
- ¹²⁴ Quoted in Cornell, S., *The transformation of tribe*, *supra* note 84.
- ¹²⁵ Cohen, F., *Felix Cohen's handbook of Federal Indian law*, *supra* note 89.
- ¹²⁶ Termed "IRA Tribes", 181 out of 263 tribes, plus the five Civilized Tribes two years later, volunteered or were coerced to adopt a basic duplicate of the federal government style with an elected tribal council and head replacing Congress and the president to take advantage of the provisions in the IRA (see Chapter 5). Tribes that formed governments after 1934 were not formally required to adopt a specific style in order to have their own government. However, possibly because they still required authorization from a conservative DOI, most are based on U.S. representational democracy rather than consensus.
- ¹²⁷ A number of theories attempt to explain how tribes have managed to maintain their socio-cultural lifestyles. Spicer views tribes as "hidden nations", whereby tribes, once subjugated, have been allowed to continue their lifestyle essentially out of ignorance by the dominant U.S. Castile see tribes as useful symbols for the federal government. And Snipp and Jorgenson see tribes as internal colonies where the status quo allows either continued subjugation or exploitation, respectively. Spicer, E., "Introduction", in *Perspectives in American Indian culture change*, E. Spicer (ed.), Univ. of Chicago Press, Chicago, 1961.; Castile, G., "Hegemony and Symbolism in Indian Policy", in *State and reservation: New perspectives on federal Indian policy*, Castile, G. and R. Bee (eds.), Univ. of Arizona Press, AZ, 1992; Snipp, M., "The changing political and economic status of the American Indians: From captive nations to internal colonies" *American Journal of Economics and Sociology*, Vol. 45, 145-157, Apr 1986, and Jorgensen, J., "Indians and the Metropolis", in *The American Indian in urban society*, J. Waddell, and O. Watson (eds.), Little& Brown, Boston, MA, 1971.
- ¹²⁸ Brandfon, F., *Tradition and judicial review in the American Indian tribal court*, *supra* note 118.
- ¹²⁹ Snipp, M., *The Changing Political and Economic Status of the American Indians*, *supra* note 127.
- ¹³⁰ See Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96; Trospen, R., *Mind sets and economic development on Indian reservations*, *supra* note 101. Note cultural or historical conditions of some tribes more closely align with IRA style government than others, so that traditional and formal authority can coincide approximately (e.g. White Mountain Apache).
- ¹³¹ In some tribes little conflict exists due to historical decision making compatible with bureaucratic authority and/or cultural receptivity to hierarchical structures. See *ibid*.

- ¹³² Cornell, S., *The transformation of tribe.*, *supra* note 84
- ¹³³ See *ibid.* for example.
- ¹³⁴ Bee, R., *Riding the paper tiger*, *supra* note 8. See also Bee, R., *The predicament of the Native American leader*, *supra* note 2
- ¹³⁵ It has been noted that, from years of federal dependency for assistance and expertise, many tribal bureaucracies have grown out of proportion to mimic and mutually support their federal counterparts. *Ibid.* See also Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96, and Cornell, S., *The transformation of tribe*, *supra* note 84. An interesting posit would be that the larger and more unwieldy the tribal bureaucracy is, the more difficulties are presented with a viable traditional system alongside.
- ¹³⁶ Notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- ¹³⁷ *Ibid.*
- ¹³⁸ *Ibid.*
- ¹³⁹ Deloria, V., Jr., and C. Lytle, *The nations within*, *supra* note 46.
- ¹⁴⁰ Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96; Trospen, R., *Mind sets and economic development on Indian reservations*, *supra* note 101.
- ¹⁴¹ Discussion, *Workshop on assessment of open dumping*, *supra* note 16.
- ¹⁴² *Ibid.*
- ¹⁴³ National Tribal Risk Assessment Forum, hosted by Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Jun 24 - 26, 1996.
- ¹⁴⁴ Statement in U.S. Senate, *Workshop on solid waste disposal on Indian Land*, *supra* note 6.
- ¹⁴⁵ Weber, M., *Economy and Society*, *supra* note 109.
- ¹⁴⁶ Jackson, J., C. Morgan, J. Paolillo, *Organization theory: A macro perspective for management*, Prentice-Hall, Englewood Cliffs, NJ, 1986.
- ¹⁴⁷ See Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96, Trospen, R., *Mind sets and economic development on Indian reservations*, *supra* note 101, and Huff, D., "The tribal ethic, the Protestant ethic, and American Indian economic development" in Joe, J. (ed.), *American Indian Studies Center*, UCLA, 1986.
- ¹⁴⁸ See *ibid.*
- ¹⁴⁹ Cornell, S., *The transformations of tribe*, *supra* note 84.
- ¹⁵⁰ Hawkesworth, M., "Policy studies within a feminist frame," *Policy Sciences*, vol. 27, 97-118, 1994.
- ¹⁵¹ See for example, Nabokov, P. (Ed), *Native American testimony*, *supra* note 94.
- ¹⁵² Yakama Nation, Dept. of Natural Resources Environmental Restoration/Waste Management Program, "A holistic approach to environmental management", Toppenish, WA, July 22, 1991.
- ¹⁵³ See Trospen, R., *Mind sets and economic development on Indian reservations*, *supra* note 101, and Huff, D., *The tribal ethic, the Protestant ethic, and American Indian economic development*.

- 154 Jackson, J., C. Morgan, J. Paolillo, *Organization theory*, *supra* note 146.
- 155 See for example, U.S. Environmental Protection Agency, *Decision-Makers Guide To Solid Waste Management*, Solid Waste and Emergency Response (OS 305) EPA/530-SW-89-072, 1989.
- 156 Trospen, R., *Mind sets and economic development on Indian reservations*, *supra* note 101.
- 157 For brief discussion on need for formalization and standardization in general for economic development, see Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96.
- 158 Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- 159 Trospen, R., *Mind sets and economic development on Indian reservations*, *supra* note 101.
- 160 For example, see review in Jackson, J., C. Morgan, J. Paolillo, *Organization theory*, *supra* note 146.
- 161 Environment types have been based primarily on environment stability and complexity of required knowledge. Some researchers have added additional parameters such as routineness, organization of external institutions that significantly affect management and administration, directedness of external institution units, and change rate. See Jurkovich, R., "A core typology of organizational environments", *Administrative Science Quarterly*, vol. 19, 380-394, 1974.
- 162 An unstable environment arises from, among other factors, ambiguous and fluctuating Federal-Indian policy, instability of tribal governments and "modern vs. traditional" policies that may affect tribal business desire(see note below), lack of collateral, changing tax incentive policies, other circumstances particular to each tribe, and relatively frequent changes in RCRA requirements and other environmental regulations. Note Bee, R. *The predicament of the Native American leader*, *supra* note 2, addresses the widely-held perception of tribal government instability as creating poor business or economic development ventures. He notes that, with particular reference to the Quechan, the frequent changeover and struggles with power do not really affect the internal working of the government. Economists and planners are not, as a matter of course, let go with new governments. Community resentment and political expediency in bracing for the next turnover protect most mid-level job positions. Regardless, the perception of tribal government instability by investors and government fundors is enough to create the market ramifications that come along with actual instability.
- 163 Jackson, J., C. Morgan, J. Paolillo, *Organization theory*, *supra* note 146.
- 164 *Ibid.*
- 165 Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96.
- 166 Bee, R., paraphrasing Max Weber, in *Riding the paper tiger*, *supra* note 8.
- 167 Cancian, Frank "Stratification and Risk-Taking", *American Sociological Review*, vol. 32, 912-926, 1967.
- 168 The groundbreaking work for innovation theory is Schumpeter, J., *The theory of economic development*, Oxford University Press, New York, 1961 (first published in 1911). See also, Drandakis, E., and E. Phelps, "A model of induced inversion, growth, and distribution", *Economic Journal*, 823-840, Dec 1966; Samuelson, P., "A theory of

- induced innovation on Kennedy-von Weizsäcker lines, *Review of Economics and Statistics*, 1965; Atkinson, A., and Stiglitz, J., "A new view of technological change", *Economic Journal*, 573-578, Sep 1969.
- 169 Bee, R., *To get something for the people*, *supra* note 31; *Riding the paper tiger*, *supra* note 8; *The predicament of the Native American leader*, *supra* note 2; Ragsdale, J., Jr., "Indian reservations and the preservation of tribal culture: beyond wardship to stewardship", *UMKC Law Review*, Vol. 59-8, 503 - 554, 1991.
- 170 See for example, Bee, R., *Riding the paper tiger*, *supra* note 8; McGuire, T., "Federal Indian Policy : a framework for evaluation", *Human Organization* , Vol. 49-3, 1990.
- 171 Bee, R., *Riding the paper tiger*, *supra* note 8
- 172 See for example discussion in Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96. The administrative apparatus and efforts to secure funds can be far out of proportion to the funds received McGuire cites as example the 48 percent of the Kickapoo budget for administration compared with seventeen percent for economic development. McGuire, T., *Federal Indian Policy : A framework for evaluation.*, *supra* note 170.
- 173 Again, the lessons of Allotment and Termination are apt demonstrations of the principle applied to tribes. As applied to economic development, see also Cornell, S., and J. Kalt (ed.), *What can tribes do? Strategies and institutions in American Indian economic development*, American Indian Studies Center, Univ. Calif., LA, 1993.
- 174 See generally *ibid*; Jarvenpa, R., *The political economy and political ethnicity of American Indian adaptations and identities*; Bee, R., *To get something for the people*, *supra* note 31; *Riding the paper tiger*, *supra* note 8; *The predicament of the Native American leader*, *supra* note 2.
- 175 Pommersheim, F., *Economic development in Indian Country: what are the questions?*, *supra* note 10.
- 176 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- 177 Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13
- 178 Solomon, S., "Tribal/County Cooperation: Making it Work at the Local Level" *Cultural Survival Quarterly*, Fall, 56- 60 1995.
- 179 *Ibid*.
- 180 Cohen, F., *Handbook of Federal Indian law*, U.S. Government Printing Office, Washington D.C., 1942.
- 181 Of 222 tribes that were in contact with EPA only 16 had executed environmental agreements with state or local governments. Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14. Solomon, S., *Tribal/County Cooperation: Making it Work at the Local Level* , *supra* note 178.
- 182 For example, one of the main objections to a California State gambling compact with tribes was the stipulation that local governments have input into siting and construction of casinos. Vellinga. M., "Costly battle looms over tribal gambling", *Sacramento Bee*, Jun 14, 1998.
- 183 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.

- 184 See *ibid.* for discussion on need for non-Indian government interaction with water quality issues.
- 185 Relationships between groups depend in part on the attitude toward the group and the perceived intentions of each. Because jurisdiction is not at issue generally, communication is facilitated through shared culture, and the hierarchy is accepted, a hidden agenda is less likely. and informal relationships are more likely to be cordial. See for example, Gudykunst, W. and S. Ting-Toomey, with E. Chua, *Culture and interpersonal communication*, Sage Pub, Newbury Park, CA, 1988.
- 186 Notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- 187 *Ibid.*
- 188 *Ibid.*
- 189 *Ibid.*
- 190 Gover, Stetson, and Williams, P.C., notes similarly that tribes do not take advantage of state developed resources in water quality program issues in *Survey of tribal actions to protect water quality*, *supra* note 14.
- 191 Note too that household hazardous waste programs are required under RCRA for state program delegation. Thus, a plan exists for all local governments' household hazardous waste, as a matter of hierarchical delegation.
- 192 For example, one tribe, with an enormous white good open dumping problem was unaware a neighboring scrap dealer collected appliances, including refrigerators, free-of-charge.
- 193 In House of Representatives, *Oversight hearing on abandoned and leaking underground storage tanks and open dump sites on Indian Reservations*, *supra* note 19.
- 194 *Ibid.*
- 195 HUD is charged with ensuring sanitation facilities and measures for its housing projects protect environment and health.
- 196 See for example, House of Representatives, *Oversight Hearing on abandoned and leaking underground storage tanks and open dump sites on Indian Reservations*, *supra* note 19.
- 197 *Ibid.*
- 198 U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- 199 *Personal communication*, Jun 16, 1994.
- 200 Ingram, H., D. Mann, G. Weatherford, and H. Cortner, "Guidelines for improved institutional analysis in water resources planning", *Water Resources Research*, vol. 20-3, 323-334, Mar 1984.
- 201 Notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13; Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.
- 202 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14. Note it is not frequency of contact, but the nature of contact on which a

- relationship depends. Gudykunst, W. and S. Ting-Toomey, with E. Chua, *Culture and interpersonal communication*, *supra* note 185.
- 203 In U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- 204 Notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- 205 In Magagnini, S., “California’s lost tribes: An “invisible” people battle ignorance, injustice”, *Sacramento Bee*, A1, A12-A14, June 29, 1997.
- 206 It should be noted that to examine the informal preference structures thoroughly, strict technical methods, such as contingent valuation and complex statistical analyses, are needed. However, the required data is non-existent and, given the difficulties experienced in achieving significant tribal participation in past environmental surveys (even those given by Indian groups), attempts at collection would prove laborious indeed. However borrowing from the ethnographical approaches in Cultural Anthropology work, it is possible to rely on observations in describing the potential role institutional dynamics play in tribal SWM troubles. See for example, Dobbert, M., *Ethnographic research: Theory and application for modern schools and societies*, Praeger, NY, 1982, and Werner, O., and G. Schoepfle, *Systematic fieldwork: Foundations of ethnography and interviewing*, Sage Pub., Newbury Park, CA, 1987.
- 207 Personal communication, Greg Beck, Director of West African Operations, International Rescue Committee.
- 208 Personal communication, Paul Young, Director, Division of Environmental Health Services, California Area Indian Health Service, Oct 15.
- 209 Personal communication, Greg Beck, Former Director of West African Operations, International Rescue Committee, May 11, 1999.
- 210 At *Workshop on assessment of open dumping*, *supra* note 16, BIA, EPA, and IHS representatives attended, and volunteered or upon proffering, explained the assistance they could offer. The majority of tribal representatives were unaware of the services of one or another agency.
- 211 Notes for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- 212 Program infrastructure is suggested as a prime factor in obtaining funding for tribal water quality programs. Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14. As noted in the text above, the principle is also noted for tribal federal funding of tribes in general by Bee, R., in *The predicament of the Native American leader*, *supra* note 2, where those tribes with unstable governments fare worse financially.
- 213 Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- 214 In intergroup contact, there is a greater fear associated with interactions with people who are unfamiliar. Gudykunst, W. and S. Ting-Toomey, with E. Chua, *Culture and interpersonal communication.*, *supra* note 185.
- 215 Because it satisfies a basic human desire (see text at notes 36-38), success serves as *reinforcement*, a condition generally required for repeated behavior. See for example,

Karen, R., *An introduction to behavior theory and its applications*, Harper and Row, New York, 1974.

- ²¹⁶ See Gudykunst, W. and S. Ting-Toomey, with E. Chua, *Culture and interpersonal communication.*, *supra* note 185.
- ²¹⁷ Based on survey results, an established working relationship is listed as a probable factor in successful water quality programs, or water quality actions within more general environmental programs, in Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- ²¹⁸ Note, while the relationship type appears to be a more significant factor in perceived communication difficulties, and thus in the degree of “comfortableness”, than interaction frequency or duration, it is generally more difficult to initiate discussion or communicate between two persons of dissimilar cultures than similar. This difficulty tends to disappear with increased interaction, possibly due to a breaking down of cultural stereotyping, replaced by interpersonal knowledge. This suggests that tribal-agency communication is more difficult than conventional community-agency communication. Paradoxically, it may behoove tribes more than conventional communities to devote effort at building and maintaining strong federal agency relationships, because the default relationship will tend to less satisfactory. For general discussion of these issues, see Gudykunst, W. and S. Ting-Toomey, with E. Chua, *Culture and interpersonal communication.*
- ²¹⁹ See various tribal testimonies in U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6; House of Representatives, *H.R. 103-102*, *supra* note 48; U.S. Senate, S. Hrg. 103-460, *supra* note 1.
- ²²⁰ Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.
- ²²¹ A general resistance to change is exhibited by organizations for a variety of reasons. Hanan, M., and J.Freeman, "Structural Inertia and Organizational Change", *American Sociological Review*, vol. 49, 149-164, 1984.
- ²²² For example, out of 20 tribal environmental representatives at the three sessions of *Workshop on assessment of open dumping*, *supra* note 16, sponsored by the IHS, only three knew who the EPA Indian Program staff person assigned to their region was. Two had worked closely with the BIA on previous projects. Eleven were on a first name basis with IHS representatives. The remainder were attending their first workshop either because of a turnover in positions, or because the position had just been developed.
- ²²³ See note above.
- ²²⁴ Requests for IHS, BIA, and EPA tribal environmental contact lists to begin a tribal outreach effort in California yielded three different lists in 1996. More than one-half of the tribal contacts differed from agency to agency.
- ²²⁵ See for general discussion Gudykunst, W. and S. Ting-Toomey, with E. Chua, *Culture and interpersonal communication.*, *supra* note 185.
- ²²⁶ Personal communication, Greg Beck, Former Director of West African Operations, International Rescue Committee, May 11, 1999. see also note 220.

- ²²⁷ The question of traditionalism in regards to economic development choices is briefly addressed in Cornell, S., and J. Kalt, *Reloading the dice*, *supra* note 96. They note differences in cultural receptivity to outside interaction, hierarchical program structures, and commercialization in tribes. Thus, some tribes are in fact “being traditional”, or being “Indian” when pursuing outside SWM partnerships or ventures, and federal agency relationships and assistance. Because they are operating in a way that does not conflict with entrenched traditional beliefs and decision making, it appears that tribal unity and power actually increase. With their large-scale outside business investment on their reservations, the Muckleshoot and Passamaquoddy are cited as examples. Note too, from Chapter 4 the goal of improved tribal sovereignty is essentially traditional. Thus, tribes that pursue strategies seemingly in conflict with their heritage, but that strengthen sovereignty, may be ultimately “traditional” as well.
- ²²⁸ Statement in U.S. Senate, *S. Hrg. 103-460*, *supra* note 1.
- ²²⁹ Personal communication, 5/23/94, during research for Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*, *supra* note 13.
- ²³⁰ Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- ²³¹ Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.
- ²³² Cross cultural misinterpretation is a common phenomenon. Even where oral and written vehicles of communicating are the same, expressive conventions can vary. While two persons may reply to the same question in the same words, what is being heard and/or relayed back may differ. For example, tribal cultures are generally more restrained in public (or with outsiders) than conventional western culture. Thus, agency staff could interpret, for example, a tribal response to assistance as lukewarm, when in fact, they are quite interested. See McNabb, S., “Self reports in cross-cultural contexts”, *Human Organization*, vol. 49-4, 1990.
- ²³³ Unlike IHS and BIA, EPA does not offer Indian preference in hiring. EPA involvement with tribes is also much more recent.
- ²³⁴ Affiliated Tribes of Northwest Indians Winter Conference, Natural Resources Committee Meeting, Spokane, Feb 12- 14 1994.
- ²³⁵ *Workshop on assessment of open dumping*, *supra* note 16, Oct 15, 1996.
- ²³⁶ Vine Deloria, Jr. first addressed and warned against the treatment of tribes as minority communities in 1969 (Deloria, V., Jr., *Custer died for your sins: an Indian manifesto*, Macmillan, New York, 1969). Regardless of sympathy assistance or ethnic solidarity elicited, he notes that tribal sovereignty is overlooked, and if overlooked, then a danger comes in its diminishment.
- ²³⁷ Affiliated Tribes of Northwest Indians Winter Conference, Natural Resources Committee Meeting, Spokane, Feb 12- 14 1994; Tribal Solid Waste Training Needs Assessment Forum, Third National Tribal Conference on Environmental Management, Polson, Montana, May 21-23, 1996.
- ²³⁸ In U.S. Senate, 103rd Congress, 1st Session, *Hearing before the Committee on Indian Affairs, on S. 720 to clean up open dumps on Indian Lands*.

- 239 Water supply and wastewater treatment are accorded higher priority under Indian Health Care Improvement Act Amendments. Open dumping and compliance with RCRA appears to be viewed more as an environmental concern, and given less priority. See statement of Bill Pearson, U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- 240 *Indian Lands Open Dump Cleanup Act of 1994*, 103rd Congress, 2nd session, S. Rep. 103-253, Apr 25, 1994.
- 241 Discussion notes, *Workshop on assessment of open dumping*, *supra* note 16.
- 242 Although this generation rate is based on urban community data, and wastestream analyses carried out at several reservations suggest a 1.5 to 2 lb/d-capita generation rate, primarily from a lack of commercial businesses and yard wastes (Zender, L., and G. Tchobanoglous, *Manual on open dumping assessment*) the former figure is still widely used.
- 243 For example, IHS has launched a study project to reassess open dumps on the Fort Hall and Metlakatla Indian Community Reservations, although both had already had open dumps assessments carried out two years previous by BIA consultants (conducting research for *ibid.*), Indian Health Service, *Open dumps on Indian Lands 1997 report: Indian Lands Open Dump Cleanup Act PL 103-399*, Dept. of Health and Human Services, Rockville, MD, Oct 1, 1997. Duplicative studies (by all agencies) are a common complaint of tribes, although it is unclear whether studies are in fact strict duplicates of each other, or simply multiple, but distinct, studies conducted on a complex problem or broad issue.
- 244 Indian Self-Determination and Education Assistance Act. See note 9.
- 245 See for example various Congressional hearings, U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6; House of Representatives, *H.R. 103-102*, *supra* note 48; U.S. Senate, S. Hrg. 103-460, *supra* note 1.
- 246 For poignant testimonies on emotional toil created, see Nabokov, P. (Ed), *Native American testimony*, *supra* note 94.
- 247 Philip, K., *John Collier's Crusade for Indian Reform, 1920-1954*, Univ. of Ariz. Press, Tucson, 1977.
- 248 See for example, testimonies in Nabokov, P. (Ed), *Native American testimony*, *supra* note 94.
- 249 See Bee, R., *Riding the paper tiger*, *supra* note 8.
- 250 Statement in U.S. Senate, *Workshop on solid waste disposal on Indian Lands*, *supra* note 6.
- 251 Tribal representative observations at Indian Health Service, *Workshop on assessment of open dumping*, *supra* note 16; Gover, Stetson, and Williams, P.C., *Survey of tribal actions to protect water quality*, *supra* note 14.
- 252 For example, *Tribal Solid Waste Training Needs Assessment Forum 1996*, *EPA Region IX Annual Tribal Environmental Conference 1996*, *Affiliated Tribes of Northwest Indians Winter Conference 1994*, *Workshop on assessment of open dumping*, *supra* note 16 (each session).

- 253 Personal communication, Paul Young, Director, Division of Environmental Health Services, California Area Indian Health Service, Oct 15. Common priority sites are drawn from each agency's list, and available resources are pooled.
- 254 Personal communication, Fran Stefan, Solid Waste Management Division, EPA Region X, Feb 13, 1994.
- 255 Tribal Solid Waste Interagency Workgroup was established in April 1998. Besides EPA, BIA, IHS, the group consists of the Federal Aviation Administration, National Oceanic and Atmospheric Administration, U.S. Geological Survey, Dept. of Agriculture, and Dept. of Defense.
- 256 Interagency Project to Clean Up Open Dumps on Tribal Lands: Request for Proposals. Federal Register: March 19, 1999, Vol 64-53, p. 13578.
- 257 Ingram, H., D. Mann, G. Weatherford, and H. Cortner, "Guidelines for improved institutional analysis in water resources planning", *Water Resources Research*, vol. 20-3, 323-334, Mar 1984.
- 258 Ibid.
- 259 House of Representatives, 103rd Congress, 1st Session, *Oversight Hearing on abandoned and leaking underground storage tanks and open dump sites on Indian Reservations*, *supra* note 19.
- 260 McGuire, T., *Federal Indian Policy : A framework for evaluation*, *supra* note 170; Bee, R. *Riding the paper tiger*, *supra* note 8.
- 261 House of Representatives, 103rd Congress, 1st Session, *Oversight Hearing on abandoned and leaking underground storage tanks and open dump sites on Indian Reservations*.
- 262 The Campo Band of Kumeyaay Indians is a case in point. Before the tribe lost its RCRA program approval with the *Backcountry against Dumps v. EPA* decision (see previous Chapter), EPA had approved the tribes SWM program. Additionally, the verdict was *not* decided, even partly, on the basis of Campo's program, which the Court appeared to find sound. *Backcountry Against Dumps et al. v. EPA* (1996) District of Columbia Circuit No. 95-1343.