



Introduction and Overview

CERCLA 128(a) Tribal Response
Program Training

Training Developed by:



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This training is dedicated to Roland Shanks
Formerly of RCAC Alaska Office



TRP Training Levels

- Tier I: Establishing a Tribal Response Program (for starting a new program)
- Tier II: Enhancing a Tribal Response Program (for increasing the capacity and abilities of an established program)



TRP Tier I: Core Topics

- Purpose & Scope of the TRP
- The 4 Elements and development and implementation of each;
- The Public Record & Institutional Controls;
- How to Establish a TRP
- Introduction to Site Work



TRP Tier II: Core Topics

- Enhancing a TRP;
- Other Mechanisms & Resources;
- EPA 128(a) Grants & Tribal TRP Consortia;
- Contract procurement and mgt. for TRP;
- Emergency Response.
- 128(a) Site Specific Activities;



TRP: Other Topics

Other relevant TRP training shall be provided by other sources:

- Institute for Tribal Environmental Professionals (ITEP);
- American Society for Testing & Materials (ASTM) (Phase I & II Assessments)
- US EPA Training courses and centers
- Etc.



References:

- The “Brownfield Law” of 2002
- Congressional Record
- US EPA HQ Annual 128(a) Guidance
- U.S. EPA & ADEC staff
- YOU!



Establish TRP Modules

- **Purpose & Scope of TRP** ←
- Element 1
- Element 2
- Element 3
- Element 4
- Public Record & I.C.s
- Steps to establish a TRP
- When Do I Get to Cleanup A Site?



Tier I: Module 1

Purpose and Scope of the 128(a)
Tribal Response Program



What is the TRP for?

- Identifying and assessing “Brownfields”
- Responding to releases of hazardous substances, pollutants or contaminants (past, present and future)
- Tribes protecting public health and the environment
- You and your community!



TRP is intended to address:



“Brownfields” and other sites past, present and future



TRP is intended to address:



- Releases of “hazardous substances, pollutants or contaminants” ...
(as defined under several laws)



TRP is intended to address:



- Including Asbestos & Lead Paint



TRP is intended to address:



- Including Asbestos & Lead Paint



TRP is intended to address:



Releases of petroleum;





TRP is intended to address:



**Meth
Lab**

Releases of controlled substances



TRP is intended to address:

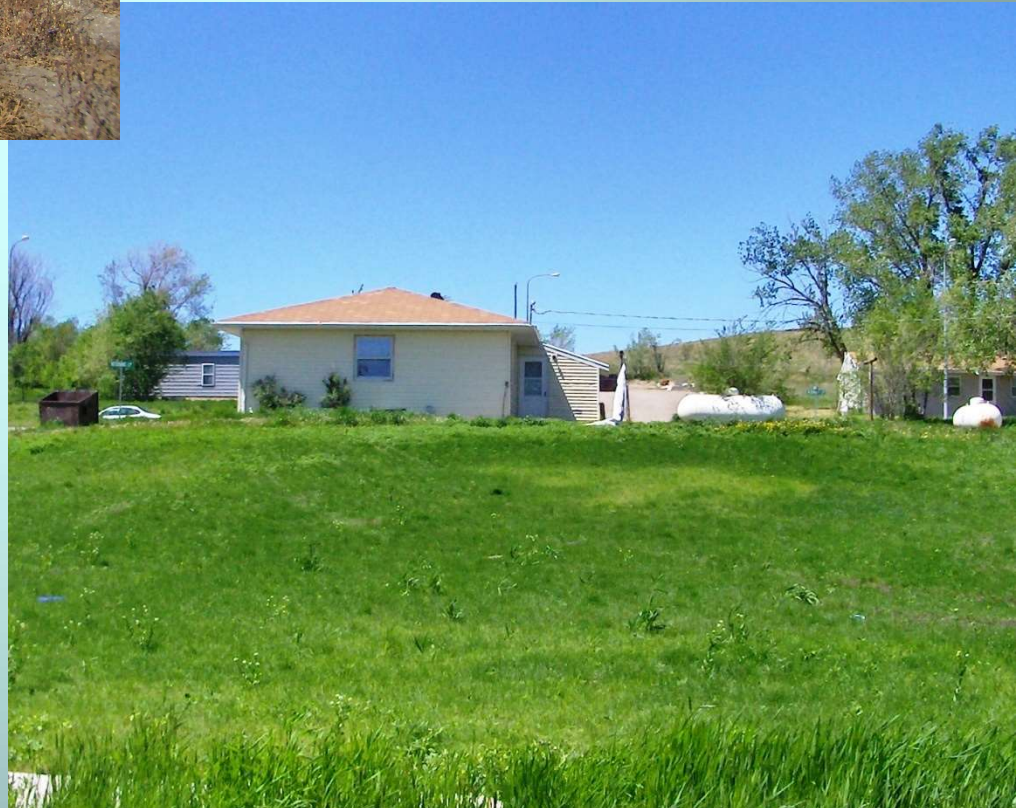


Mine Scarred Lands



← Change This

To This →
&
Eventual Reuse





The “Law”

- Small Business Liability Relief and Brownfields Revitalization (SBLRBRA, hereafter referred to as the “Brownfield Law”) passed by Congress in 2002.
- Amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA aka Superfund)



The “Law”

- Added to Section 101 (Definitions):
(39) (A) IN GENERAL.—The term “brownfield site” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.



Translation?

Buildings and/or land/waters that may be contaminated with one or more hazardous substances and the possible contamination is preventing or discouraging use or restoration of those buildings or land, as well as posing a risk to public health and safety and/or the environment.



The “Law”

Added: Section 128(a) ASSISTANCE TO STATES (1) IN GENERAL.—

(A) STATES.—**The Administrator may award a grant to a State or Indian tribe that:** (i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements.



Tribal Response Program

Therefore: Congress built upon the previous EPA brownfield activities and provided EPA with expanded authority to fund other activities that build capacity for state and tribal response programs.

This created the:

“Tribal Response Program” (TRP).



The “Law”

Section 128(a)(1)(A)(i) lists the four elements of a State or Indian Tribe response program:

- (1) Timely survey and inventory of brownfield sites.
- (2) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that a response action will protect human health and the environment.



The “Law”

Section 128(a)(1)(A)(i) lists the four elements of a State or Indian tribe response program:

- (3) Mechanisms and resources to provide meaningful opportunities for public participation.
- (4) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.



The “Law”

ALSO:

- Section 128(b)(1)(C) requires a “PUBLIC RECORD” - the Public Record
- The Public Record shall contain information on the use of “Institutional Controls” in the remedy of a site.



The “Law”

Notes:

- Congress refers to both “response actions” and “cleanups” and the terms are used interchangeably.
- Although Section 128 is titled “State Response Programs” it is clear that it applies to states and Indian Tribes.



128(a) Grant awarded:

- to establish or enhance a response program
- to take reasonable steps to include each of the 4 Elements
- to establish & maintain a Public Record
- and to increase the capacity of a Tribe to assess and cleanup contaminated sites and other releases



The "Law"

Notes:

- For the purpose of this program the term "**Indian tribe**" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village (but not including any Alaska Native regional or village corporation), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- Tribal consortiums are also eligible for funding under this program.



Goals of EPA TRP Funding

Generally to increase tribal cleanup capacity and:

- 1)** to ensure that tribal response programs include, or are taking reasonable steps to include, certain elements; and
- 2)** to provide funding for other activities* that increase the number of response actions conducted or overseen, by a tribal response program. (**including Site Specific Activities*)



128(a) Grants

- . Alaska Tribes and Native Villages are eligible for this grant program.
- These are not competitive grants
- These are not the same as Section 104(k) Brownfield Assessment or Cleanup Grants
- These are “Cooperative Agreements”

Alaska STRP Grantees 2011





Background

1995: Beginning of “Brownfields”

An adverse impact of the Superfund Program and its cost recovery program to pursue “responsible parties” for the costs of assessing and cleaning up the NPL sites was the avoidance of potentially contaminated sites by developers, real estate agents, lenders and insurance companies. This problem led to some properties becoming known as a “**brownfield**”, which is the opposite of a “**greenfield**”. (A greenfield is a general real estate term for undisturbed property with no potential contamination issues).



Background

2002: The “Brownfield Law”

- In conducting the congressional hearings that led up to the passage of the 2002 “Brownfield Law” it was stated in the legislative history: “The vast majority of contaminated sites across the Nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority. For example, while there are an estimated 450,000 brownfield sites, there are fewer than 1,300 NPL sites.”



EPA 128(a) Guidance

U.S. EPA Office of Brownfields Land Revitalization issues an annual 128(a) funding guidance each Fall:

“Funding Guidance for State and Tribal Response Programs, Fiscal Year 20XX”

NOTE: This guidance is supplemented by EPA Region 10.



128(a): status of Tribes

128(a) is significant in that it treats Tribes the same as states.

(In the Solid Waste Act, as amended by RCRA in 1976, a Tribe is defined as a “municipality”)



Impacts of 128(a)

- Empowered Tribes to identify, inventory, assess and cleanup contaminated sites in Indian country not otherwise being addressed.
- The TRP has documented hazardous releases at some sites that have compelled a response action by federal agencies or other entities.
- Enabled the Tribes to apply for grant funds to address some sites or take action themselves on other sites.
- A big step forward in exercising tribal sovereignty and self implementation of tribal laws and codes to address such problems and prevent their reoccurrence.



Impacts of 128(a)

NOTE: All of these impacts may vary in their implementation from Tribe-to-Tribe depending on the provisions of treaties and other federal laws or acts of congress and any agreements or MOA/MOUs the tribe may have with federal agencies or states.

{e.g. The Alaska Native Claims Settlement Act (ANCSA) of 1971 may affect how this program is implemented in Alaska}

Consult appropriate legal expertise for any specific issues that may arise.



Impacts on Other Programs

- Addressing solid waste issues including illegal dumping & screening illegal dump sites for hazards;
- Development of tribal waste management policies or rules;
- Development of tribal civil compliance and enforcement procedures;
- Assisting with addressing lead paint and asbestos exposures and abatements;
- Assisting with development of tribal emergency response capacity;
- Assisting with addressing leaking storage tank problems;



Impacts on Other Programs

- Preventing or addressing releases from poor waste management practices;
- Assisting tribal economic development or property offices with “Due Diligence” or “All Appropriate Inquiry”;
- Assisting with development of Integrated Solid Waste Management Plans (ISWMPs); and
- Creating public outreach materials and conducting public meetings and forums, sometimes in traditional languages.



Tribal Issues

- Defining tribal authority or jurisdiction for imposing tribal policies or rules;
- Researching the history and locating ownership documents for property can be difficult;
- How to impose “institutional controls” on land and coordinate such controls with ADEC and federal agencies (BIA, BLM, etc.);
- Protection of sacred and culturally sensitive sites and related information;
- Coordination with multiple tribal, state and federal authorities and agencies;



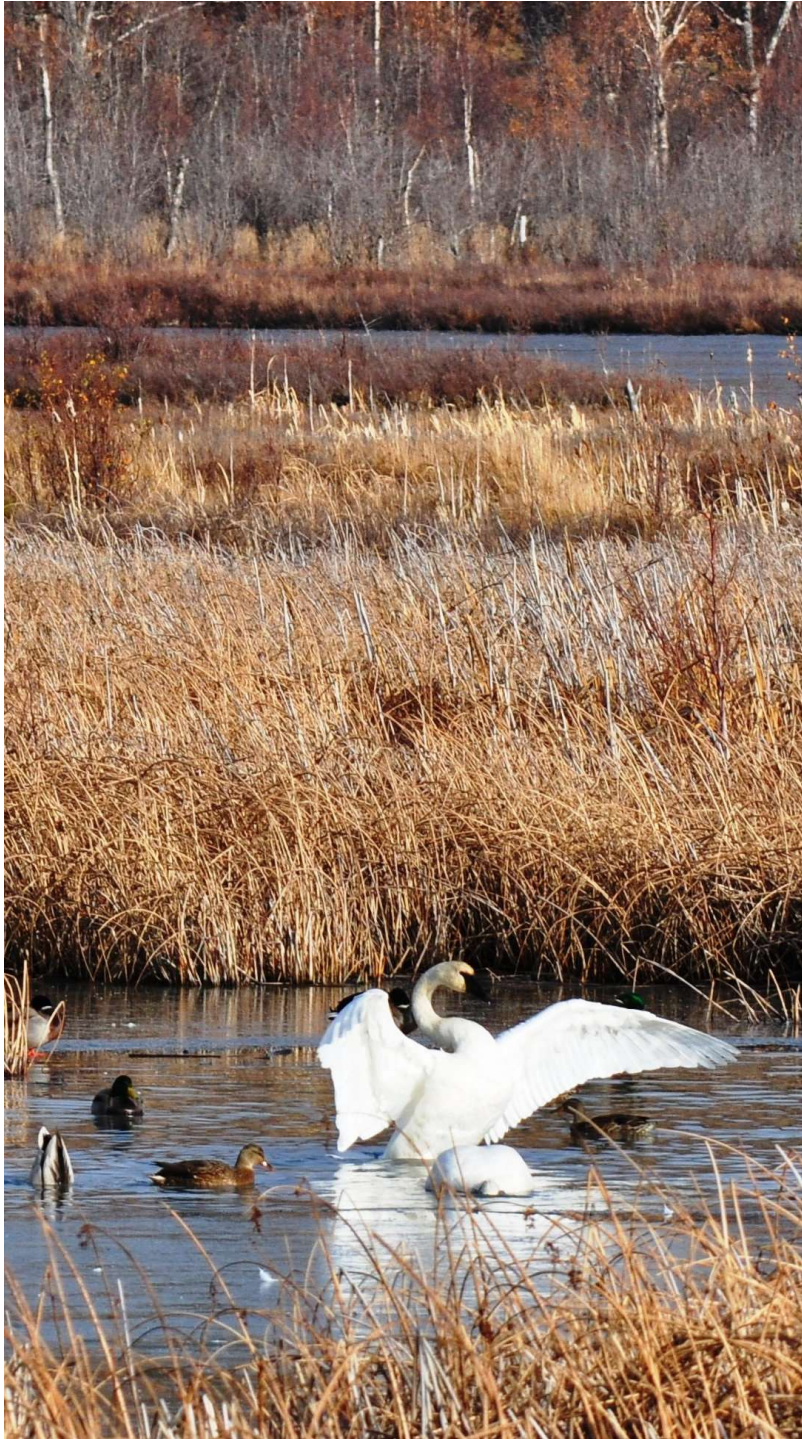
Tribal Lessons Learned

- There are many more brownfields or other sources of releases in “Indian country” than originally anticipated;
- Illegal dumping and poor waste management can create releases of hazardous substances;
- Most old structures have asbestos and lead paint problems;
- TRP contracting is unique and a critical and important process;
- New tribal rules, procedures and policies may be needed to fully implement the program; and
- A lot of training is required.



Further Implementation

- New discoveries of past releases or potential releases of hazardous substances, pollutants or contaminants;
- Continuing need to monitor and address activities that tend to create new releases from accidents and spills; industrial activities; fires; construction and demolition; aging existing buildings; and
- Continuing need to monitor and address releases from poor waste management and illegal dumping.
- There is also the potential to provide technical support to other tribal/village programs and offices.



The End