



# Tier 1 Module 4

**CERCLA 128(a)**

**Tribal Response Program**

**Element 3: Public Participation**



## Element 3: The “Law”

SEC. 128(a)(2) (C) Mechanisms and resources to provide meaningful opportunities for public participation, including:

- (i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
  - (ii) prior notice and opportunity for comment on proposed cleanup plans and site activities;
- and



## Element 3: The “Law” (cont.)

- (iii) a mechanism by which—
  - (I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and
  - (II) an appropriate State official shall consider and appropriately respond to a request under sub-clause (I).



# US EPA Guidance

This element can apply to any response action (completed or planned) under the oversight or jurisdiction of the Tribal Response Program to include a response action (clean up) conducted by a third party.



# US EPA Guidance

- Although it is not required for a response action conducted only under federal jurisdiction (i.e. Superfund, RCRA, LUST or DoD FUDS) the tribe would be strongly encouraged to provide public access to all relevant documents available through the TRP office.
- EPA will allow tribes to use TRP Grant funds to make information available to the public via the internet or other means.



# US EPA Guidance

EPA strongly encourages tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities and community members, especially:

- ✓ potential environmental justice communities;
- ✓ communities with a health risk related to exposure to hazardous waste or other public health concerns;
- ✓ economically disadvantaged or remote areas; and
- ✓ communities with limited experience working with government agencies.



# US EPA Guidance

## Summary:

- Minimum requirement = public notification and participation applies to all response actions taken/planned under the TRP
- Encouraged = Such activities can apply to all response actions taken/planned, regardless of jurisdiction, in Tribal lands.

Note: The **Public Record** could be the primary list of sites and actions that are subject to the requirements of this Element.



# Public Access

Public access to remediation plans and reports and decision documents is important.



Without access to such documents the “rumor mill” tends to create more interesting information and mis-information that can create problems and unnecessary concerns.





## Public Access includes:

- Making copies of planning and decision documents available and accessible to the public, sometimes at multiple locations;
- Making documents available at a local tribal district office, library, school or other public office or building;
- Making such documents available for review on a tribal web site;



## Public Access includes:

- Making such documents available for review at a public computer work station;
- Making information available in a local traditional language; and
- Including additional information as part of or along with the Public Record.

{Note: keep original documents secured}

# Three Affiliated Tribes TRP/Brownfields Brochure using a traditional Language

## **Tribal Response Program/Brownfield Three Affiliated Tribes Environmental Division**

### *English Translation*

hunaanú' kUššINaseéNU ti-  
raawaaruuxtii  
šikaakatuúteeRIIt atsú tiwaaraarux-  
tii  
tuxtaaNA'o noohunaáčituú'  
ti-NAhuná-sA wekaakIhuNAhAs

1. This land of ours is sacred!
2. Even though the sacredness is not visible.
3. Have respect for everything
4. The earth is the only thing that lives for ever!



# Prior Notice

- This requirement applies to all planned response actions conducted under the authority of the Tribal Response Program. This would include, at a minimum, all site specific response actions conducted utilizing TRP Grant funds.
- A reasonable amount of time should be provided for the review and comment of documents and they should be reasonably available for review.



# Prior Notice

A general public meeting or forum should be conducted to answer questions and provide additional information as well as to receive verbal and/or written comments.

The Tribal administrative requirements or policies should be consulted for the appropriate forum and process to be utilized.



# Request for Assessment

- This requirement states that a person may request an assessment of a brownfield site in the community in which the person works or resides. Therefore, such a person does not need to be an enrolled tribal member to make such a request.

{Note that in CERCLA a “person” is defined as: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.}



# Request for Assessment

- There are many ways to provide a mechanism for a “person” to request that potentially contaminated sites in their community be evaluated and be addressed as appropriate by the proper agency.
- In return, they should expect to receive a response to their request and be provided information on the status or condition of the site and what action may be initiated by whom.



# Request for Assessment

Upon request, any site can be investigated by the TRP to determine if:

- it should be included in the survey and inventory of Brownfield sites; or
- other actions should be taken to determine if any contaminant releases, past or present, should be assessed and possibly remediated or addressed in some way.





# Request for Assessment

Such requests can be a valuable source of information and can lead to sites added to the Brownfield Inventory and further assessment and cleanup actions by the TRP, the U.S. EPA or other appropriate agency or party.

Such requests can lead to discovery of sources of contamination that otherwise would not have been discovered including illegal dumping.



# Tribal Accomplishments

- Tribes have provided copies of documents in the tribal environmental office, the main tribal government offices.
- Tribal web sites have been used to provide information as well as copies of documents and reports.
- Some tribes have also provided translations of key information or summaries in the local traditional language(s).



# Tribal Accomplishments

- Tribal/Village social events have provided opportunities for outreach and information booths.
- Tribes have conducted public/community meetings and provided information at tribal government meetings.
- Tribes have used local radio stations and newspapers or newsletters to provide announcements and information on site activities.





# AK Tribal TRP Web Sites

- [http://www.kuskokwimcouncil.org/index.php?option=com\\_content&view=article&id=60&Itemid=70](http://www.kuskokwimcouncil.org/index.php?option=com_content&view=article&id=60&Itemid=70)
- <http://www.yritwc.org/Home/tabid/36/Default.aspx>
- <http://www.ptialaska.net/~jeffbens/met/MP.html>



# Tribal Issues: Requests

- Determining site land status and ownership in a timely manner
- Determining Tribal Jurisdiction to conduct an assessment
- Establishing site priority for further action



# Tribal Issues: Access

- Providing access to documents to the public in remote communities.
- Providing access to documents during adverse weather periods.
- TRP participation and coordination with response actions conducted by other programs or agencies.



# Lessons Learned

- Do not put original/only copies out for public review
- Make documents available as soon as possible
- Some documents and reports need some explanation or clarification (too technical)



# Lessons Learned

- Failure to provide timely information can lead to problems and delays in the project.
- Just announcing a public meeting may not achieve the necessary goals of public input and participation. More pro-active outreach to the community and tribal government may be necessary.





# Lessons Learned: Requests

- Do not ignore any report or request.
- Provide timely feedback to person or organization that made request or report on status of action.
- Document requests and responses.
- Improved knowledge and coordination with other programs.



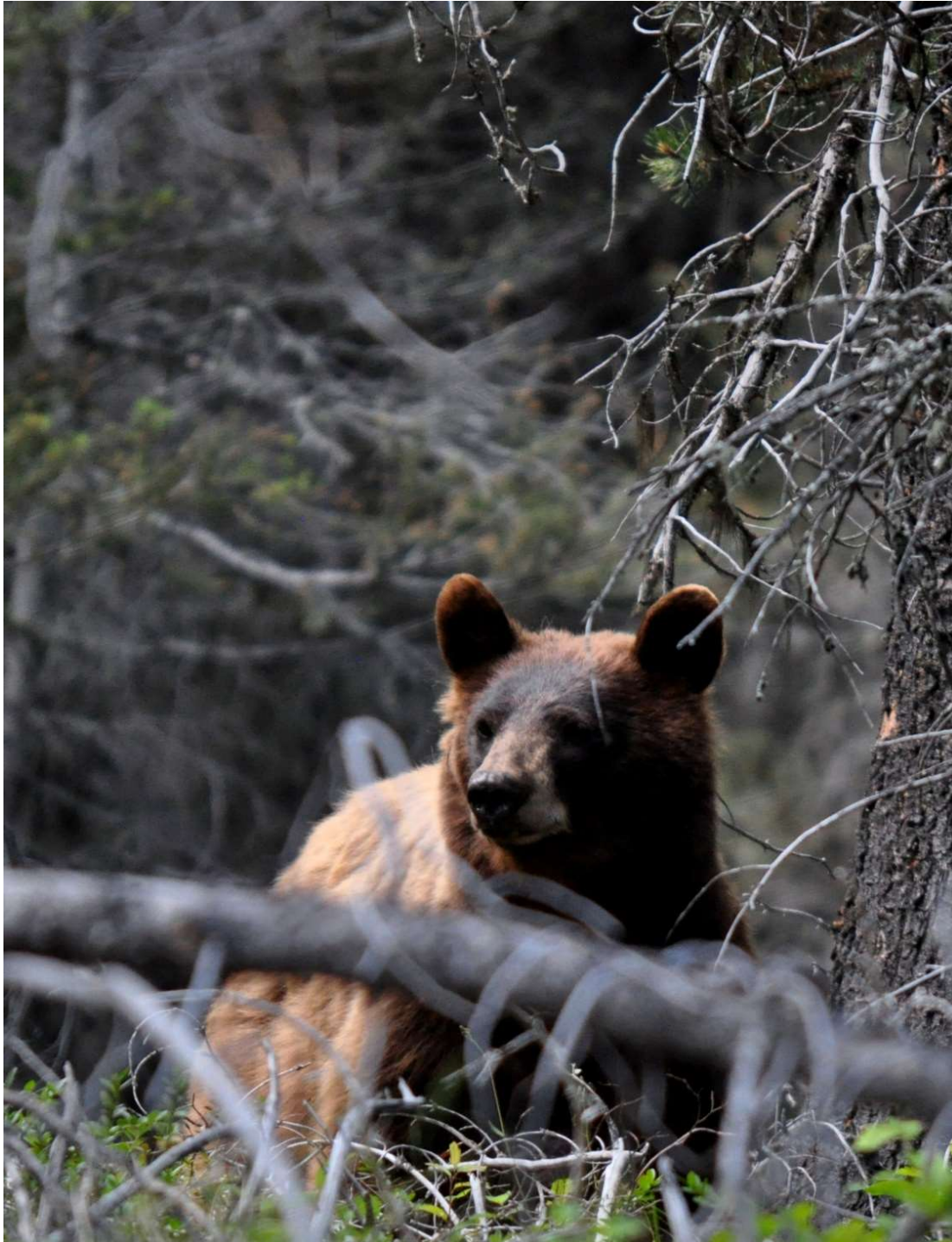
# Further Implementation

- Improve GIS and mapping capabilities of sites.
- Improve means to research property status, ownership and history.
- Identify additional sources of funding to address site issues.



# Further Implementation

- Improved coordination with other agencies and programs (ADEC, EPA, DoD, USACE, etc.)
- Improved means of community access to information and knowledge of where it is located for review.



**The End**