



Tier 1 Module 5

CERCLA 128(a)
Tribal Response Program
Element 4



Element 4: The “Law”

SEC. 128.(a)(2) (D) 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.



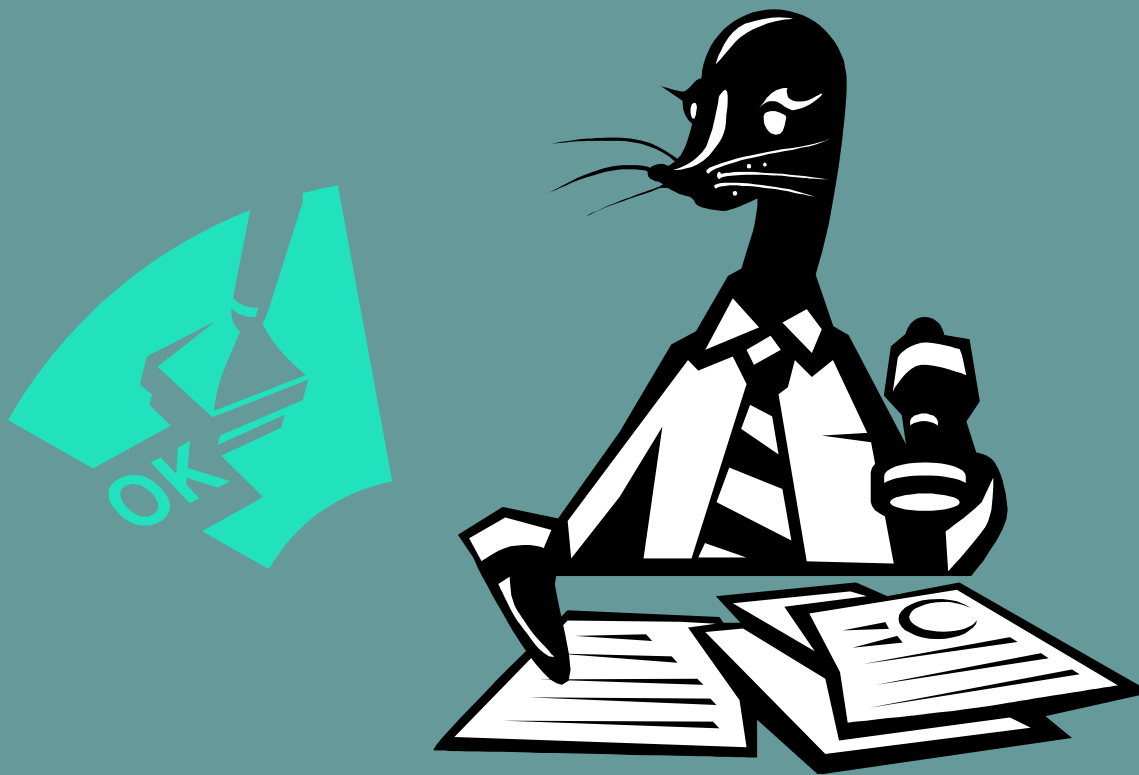
Two Parts of Element 4

- 1) Approval of a Cleanup Plan
(Response Action)
- 2) Verification and Certification that
the response is complete



Element 4 Part 1

Approval of a Cleanup Plan

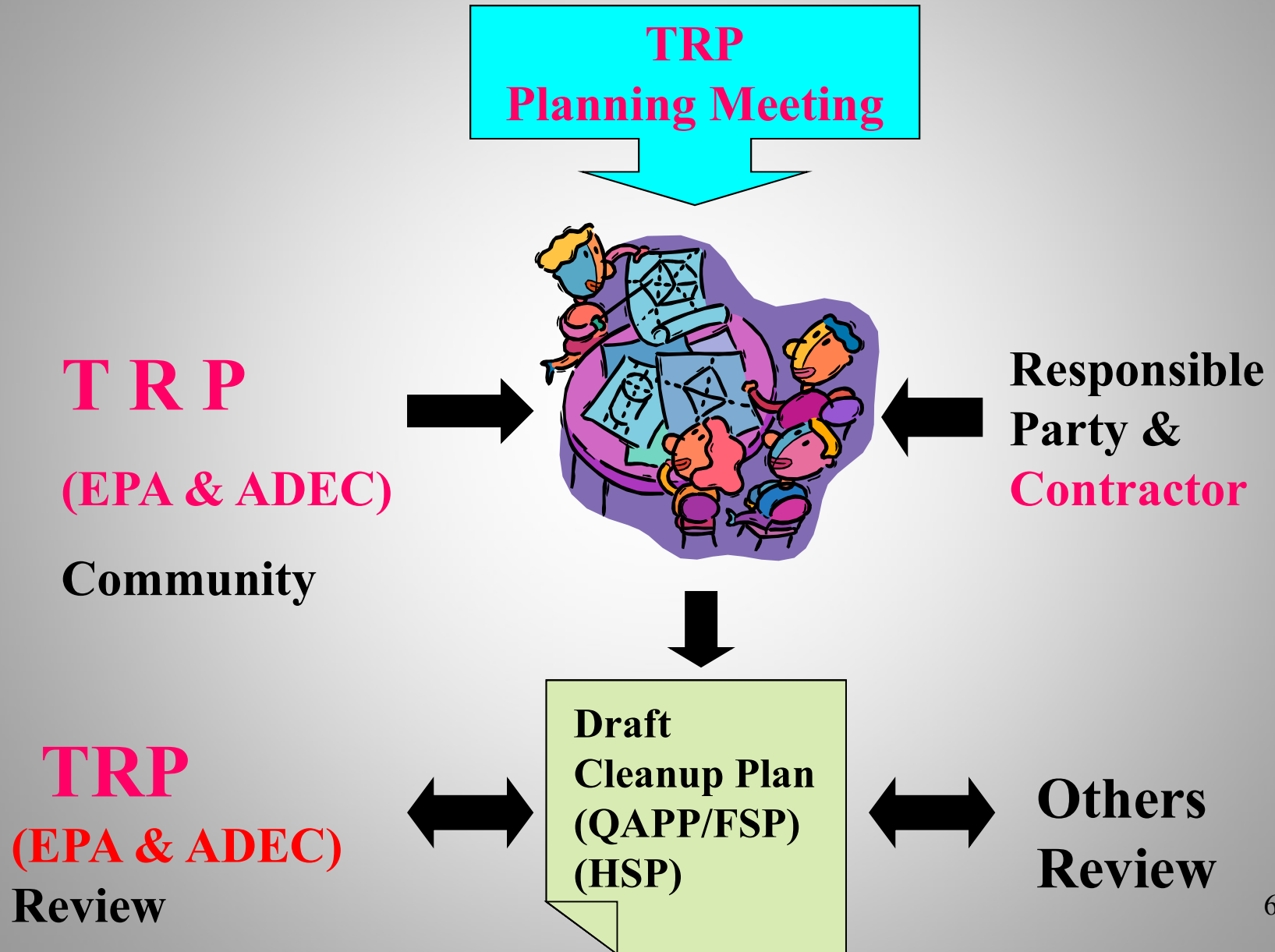




US EPA Goal

- EPA's goal in funding activities under this Element is to have tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete. **Written approval by a tribal response program official of a proposed cleanup plan is an example of an approval mechanism.**

Typical Clean up Planning Process



Cleanup Process



Public Meeting

Final-Draft
Cleanup
Plan



Final
Cleanup
Plan

Admin/Public
Record

**TRP
Approval***

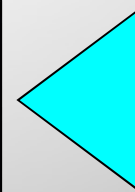


**Cleanup
Conducted**

* EPA and/or ADEC also?



**TRP
Oversight
&
Verify**





Hire an Expert?

Hiring a consultant or other expert (e.g. a “licensed site professional”)* to assist with the review of cleanup plans and other relevant factors can be a grant fundable cost under 128(a) subject to the approval of the EPA Regional grant manager.

* *No LSPs in AK*



Element 4 Part 2

Verification and Certification of a Cleanup





Element 4: Verification & Certification

Indian Tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete.



US EPA Goal

EPA's goal in funding activities under this Element is to have tribes include in their response program mechanisms to verify that response actions are complete.

Mechanisms can include:

- ✓ Tribal Laws/Codes
- ✓ Tribal Approval Protocols or Procedures
- ✓ Tribal Council Resolution
- ✓ Agreement with another agency



Verification

- When a response action is completed there needs to be verification by review and/or audit of the action and its' results to ensure that all remediation requirements for a site have been successfully implemented or satisfied.
- The verification should be conducted by someone that has the expertise and experience to perform the audit of the results and/or conduct verification sampling and testing.



Verification

The verification can include:

- A review and audit of all field reports and data to include all relevant environmental media sampling and analysis results; and/or
- Independent sampling and analysis of relevant environmental media to verify results of the remediation.



Eligible Use of Grant Funds

Eligible uses of 128(a) grant funds for this Element include, but are not limited to:

- Auditing site cleanups to verify the completion of the cleanup;
- Hiring a “*licensed site professional*” to provide expertise; and/or
- Verification at non-brownfields sites (if such activities are included in the tribe's work plan.)



Who can conduct Verification?

Verification can be conducted by:

- Qualified Tribal staff
- “licensed site professional”
- Qualified “Environmental Professional” (as specified under 40 CFR §312.10)
- Qualified Tribal contractor
- US EPA and/or state environmental staff
- Other qualified government staff (BIA, IHS, BLM, etc.)



Certificate of Completion

The certificate is normally requested by and issued to the “person responsible for conducting the response action”. The “person” is typically the party that owns the property and/or the party that is responsible for the release(s). *(That would not normally be the contractor actually performing the cleanup, but the party that the contractor is performing the work for and/or the property owner.)*

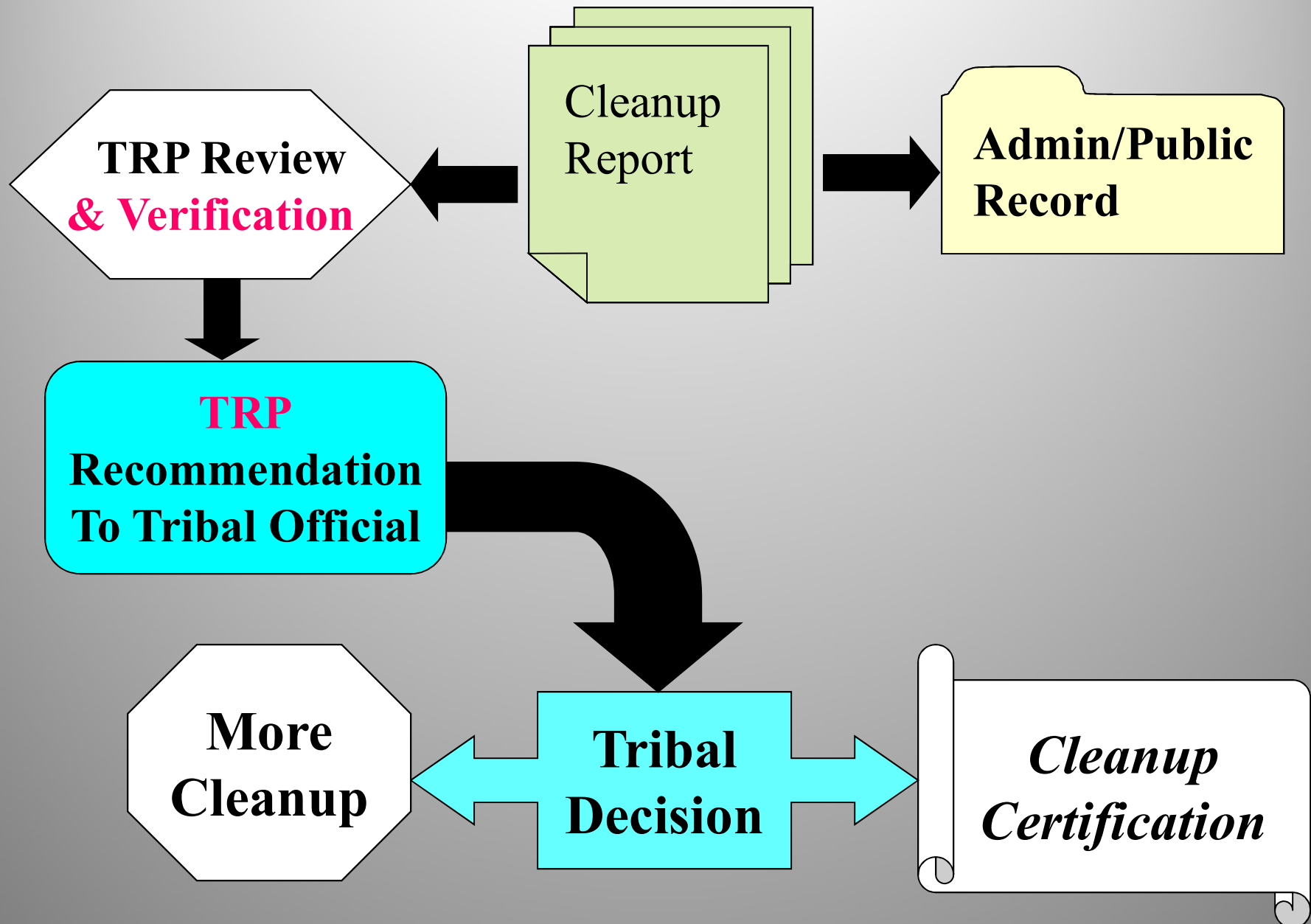


Certificate of Completion

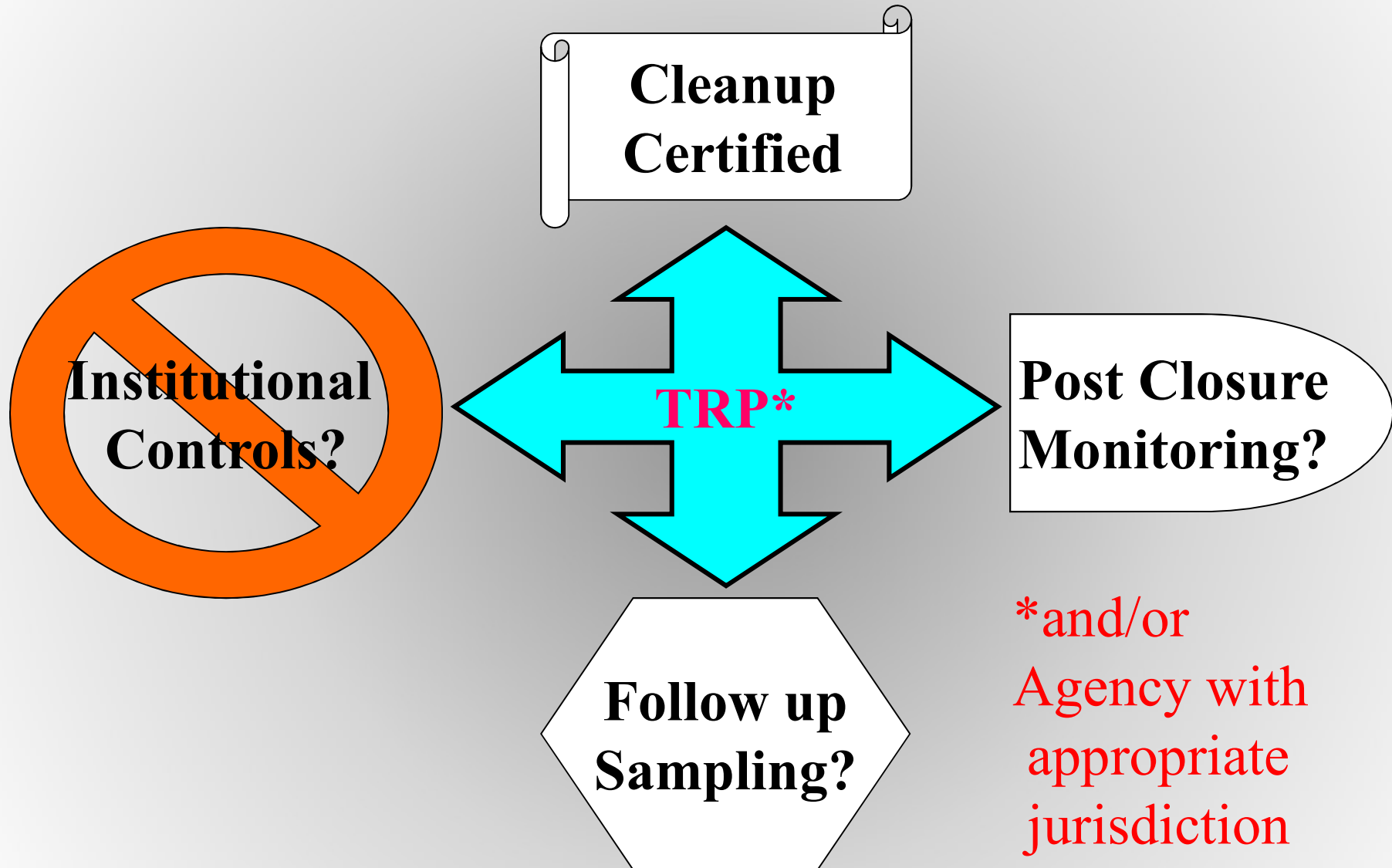
The certificate is normally requested by and issued to the “person conducting the response action”. The “person” is typically the party that owns the property and/or the party that is responsible for conducting the response action.

(That would not normally be the contractor actually performing the cleanup)

Clean Up Completion



Cleanup Certification Follow up Needed?





Tribal Accomplishments

- **AK Tribes are developing internal protocols and policies to implement these requirements.**
- **Tribes have gained some experience with the development and approval of a cleanup plan through:**
 - ✓ **Review and/or oversight of DoD cleanup actions; and/or**
 - ✓ **Contracting to the DoD to conduct a cleanup.**



Tribal Accomplishments

- Tribes have also assisted the U.S. EPA staff in planning and conducting cleanups on their lands under RCRA, CERCLA and LUST, etc.
- Tribes have also reviewed and commented on cleanup plans developed by ADEC.
- A Tribe has used 128(a) funds to verify a DoD cleanup



Tribal Issues

- It may not be clear if the tribe has any existing authority in place to formally require and/or approve a cleanup plan.
- In some cases, it can be difficult to determine who has the jurisdiction and/or the lead to approve a cleanup plan for a site.



Tribal Issues

- The impact of historic and cultural issues and the consultation and studies required by state and/or tribal historic preservation offices can affect the remedy selection as well as be time consuming and costly.
- Technical assistance is often needed to assist the tribes with establishing site specific, risk based, cleanup standards and reviewing and approving cleanup technologies.



Tribal Issues

- Availability and costs of proper Tribal legal support
- Funding for sampling and analysis not always available.
- Availability of necessary expertise



Lessons Learned

- Need to maximize ability and rights to review and comment/approve of cleanup plans developed by another agency (EPA, ADEC or other federal entity).
- Need to establish clear tribal processes and, where possible, authority to review and approve cleanup plans.
- Need to identify all tribal entities that need to be involved in and/or informed of approval of a cleanup plan.



Lessons Learned

- Need expertise and/or technical support to set site specific, risk based, cleanup standards and goals and to gather critical information and data.
- Need to educate and inform tribal leaders of cleanup decision making process and goals (ongoing problem due to turn over of elected officials).



Lessons Learned

- Who has the authority to access a site and conduct sampling and oversight in order to verify and certify a response action needs to be established.
- Model Tribal documents and letters should be drafted and receive tribal legal review before they are needed.
- Work out agreements with other agencies on roles and responsibilities



Lessons Learned

- Tribes need to determine internal and external capabilities and capacity to conduct verification reviews and sampling/analysis in advance.
- There may be jurisdictional and/or legal issues to be resolved in order to conduct verification and issue a certification of cleanup.



Further Implementation

- Technical assistance and training needed.
- TRP coordination with BIA in confirming cleanups by lessees and prior land owners prior to transferring land or buildings to a Tribe.
- Improved coordination with cleanup actions by other programs and agencies.



The End