



Tier II: Module 1C

**CERCLA 128(a):
Tribal Response Program**



Enhancing the Public Record & Institutional Controls



How do I “enhance” the Public Record & I.C.s?



Can you put some Institutional Controls on the cat?

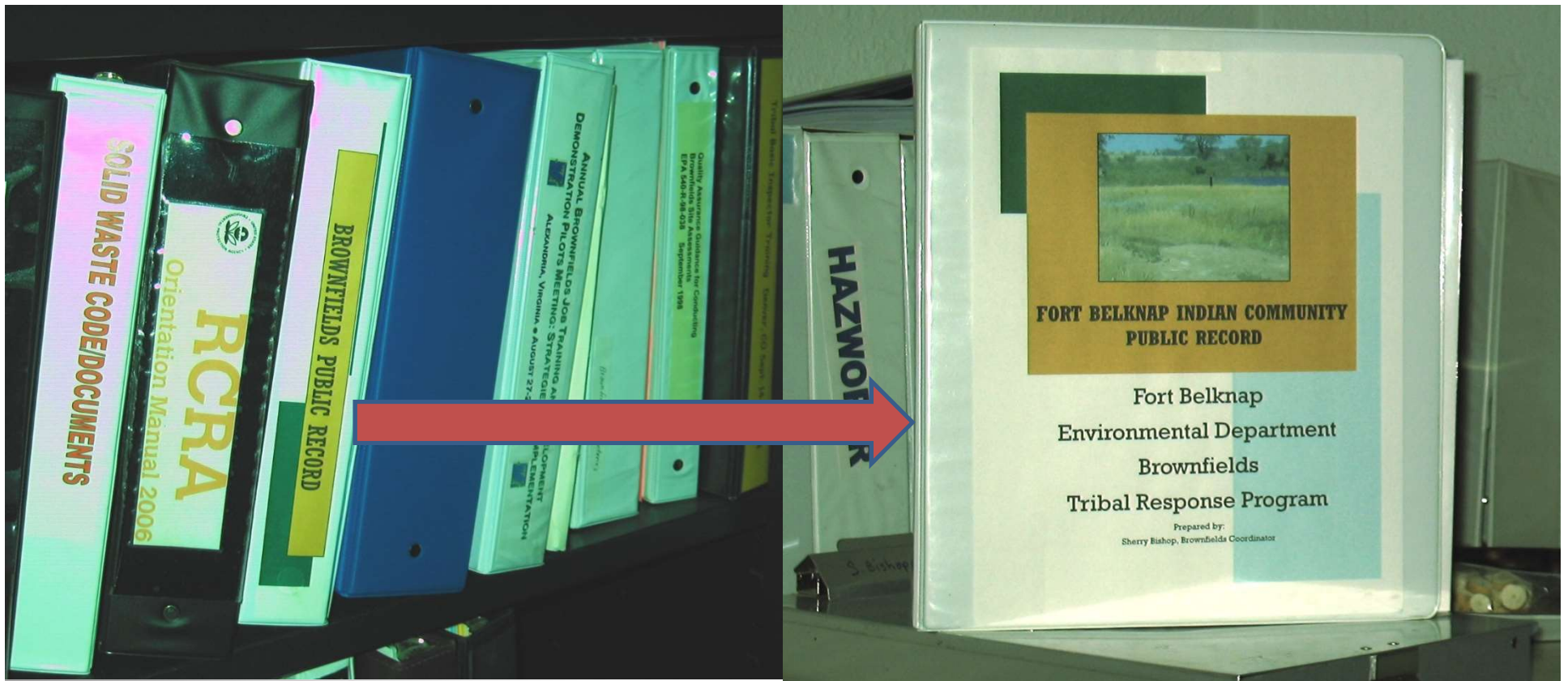


Public Record



The “Law”

128(b)(1)(C) PUBLIC RECORD..... *“maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year.”*



Most Tribes have created a notebook or file designated as the “Public Record” that is available to the public at the tribal environmental office, the tribal government office, or other readily accessible public location such as a school or library.



Public Record

- Do people know what it is?
- Do they know where it is?
- Is it up to date?
- Can it be more accessible or in more places?
- Can you add more usable information to it? (more pictures?)
- Is it on your web site? (Have you checked it?)



Maintenance of P.R.?

Subject to EPA regional office approval, tribes may include development and operation of systems that ensure long term maintenance of the public record in their work plans.

- Is there another person or tribal office that could do the job of keeping the P.R. up to date and complete?



Other Information

The process or media used for the Public Record may also be a mechanism to inform the community of related information or actions such as:

- Phase I or II Assessments planned or conducted
- Brownfield Inventory
- Related Inventories (open dumps, LUST, etc.)
- Informal “cleanups” such as community cleanups, school lab cleanups, open dump removals, etc.



Improve the P.R.?

- Using a multi-media approach that will reach all of the community?
- Improved coordination with other cleanup authorities and the use of the Public Record as a means to inform the community of all response actions that have or will take place in, or in the vicinity of, their community?



Institutional Controls



The “Law” (cont.)

“The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. “



I.C.s are:

Administrative or legal controls that help minimize the potential for human exposure to contamination on a site; or protect the integrity of a response action.



WHY?

Governmental, Administrative and/or Legal Controls and/or Conditions need to be placed upon the use of a property when remaining or residual contaminants may pose a hazard if they are disturbed or if the land use changes and that would cause unacceptable exposures or new releases.



Examples of I.C.s

- **Signs**
- **Notices in Deed, Lease, etc.**
- **BIA Title Status Reports (TSRs)**
- **General area land use restrictions**
- **Site specific land use restrictions**
- **Land use review and approval**



Fundable Activities

EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a). This may include installing, maintaining and monitoring engineering controls necessary to implement and enforce the institutional controls such as: fencing, gates, earthen berms or other barriers, signage, boarding of buildings and monitoring equipment.



Tribal I.C.s

A new concept to most tribes but becoming more needed due to:

- ❖ Need to restrict use of “cleaned up” sites or old closed dumps/landfills.
- ❖ Needs to expand housing areas
- ❖ Needs to renovate old housing or buildings
- ❖ Tribal acquisition of older properties



Tribal I.C.s developed?

Has a model tribal I.C. process been developed?

- *Tribal officials informed?*
- *Tribal administrative process determined?*
- *Signatures & sign-offs needed determined?*
- *Legal review and support in place?*
- *Filing and record system in place?*
- *Know who needs a copy? (tribal offices, ADEC, BIA?)*
- *Any other approvals or coordination needed?*
- *What monitoring or follow up may be needed?*
- *How will it be enforced?*



Tribal Environmental Review?

Some Tribes are developing their own environmental review process to review and approve any tribal property use or construction on tribal lands.

Some Tribes are developing their own Environmental Policy Act (TEPA) to include the review of any land use controls.



Monitoring I.C.s?

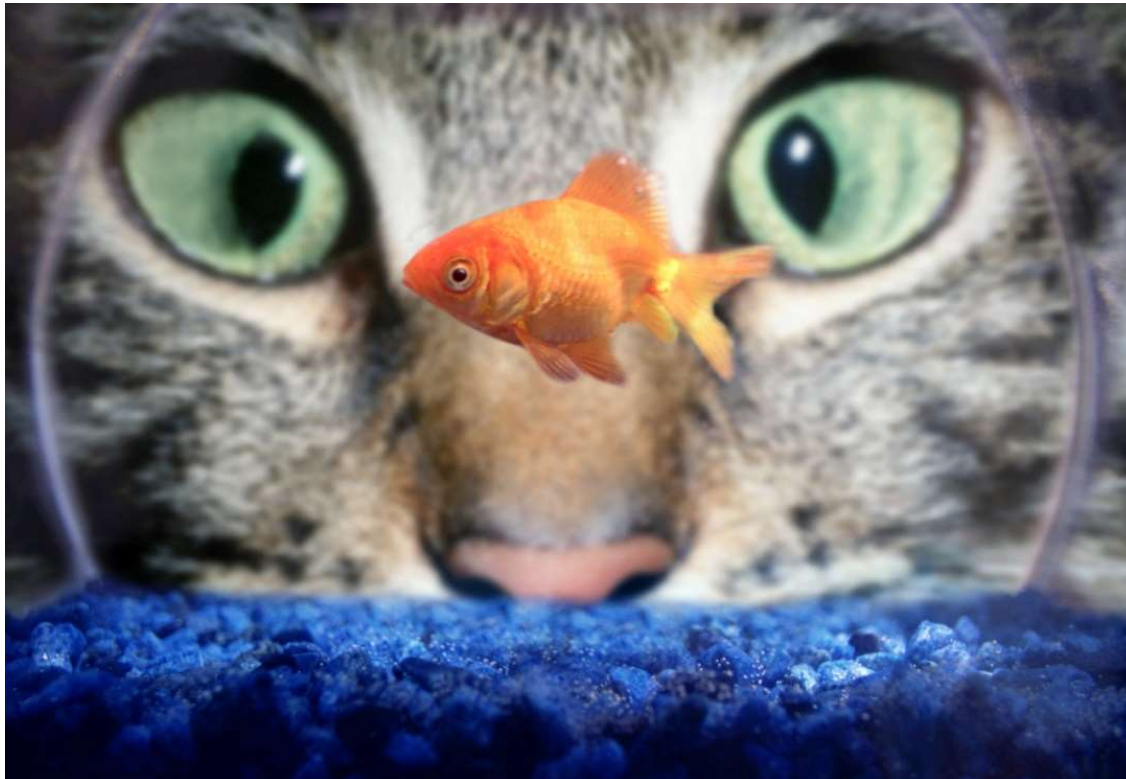
Have you made any arrangements for:

- **Pre-approvals of changes in land use required?**
- **Pre-approval for construction?**
- **Notification of change in ownership?**
- **Notification of change of lease?**
- **Notification in change of land status?**



Other Agency Actions

Conduct site I.C. monitoring for another agency (EPA, ADEC, BIA, DoD or USACE)?





What else can I do to “enhance” my TRP?



Add a cute poodle to the staff?



Other Funding?

The Administration for Native Americans (ANA) awards funds through grants to Native Americans. These grants are awarded to eligible Tribes and Native non-profits that successfully apply for discretionary funds for the development of environmental laws, regulations and related policies and procedures and legal support.

{consult the ANA or [grants.gov](https://www.grants.gov) for more details}



Other Funding?

The EPA has multiple grant opportunities @ year for such things as:

- Brownfield 104 Assessment & Cleanup
- Open Dump cleanups
- Community hazardous waste collection events
- School hazardous waste inventory and removals
- Emergency Response capacity building

{consult your EPA project mgr. or [grants.gov](https://www.grants.gov) for more details}



The End