



Tier II: Module 2

**CERCLA 128(a):
Tribal Response Program
Other Mechanisms & Resources**



“Other Mechanisms and Resources”

Who should I coordinate with? (and why?)





“Other Mechanisms”

Element 2 mentions the use of “other mechanisms, and resources”.

- What are they?
- Who are they?
- When do I use them?
- Can they be used for other Elements as well?



“Other Mechanisms”

Who are they?

- ✓ Other tribal programs
- ✓ Other Agencies
- ✓ Other laws or authorities
- ✓ Other parties (private or business)
- ✓ Other means of persuasion

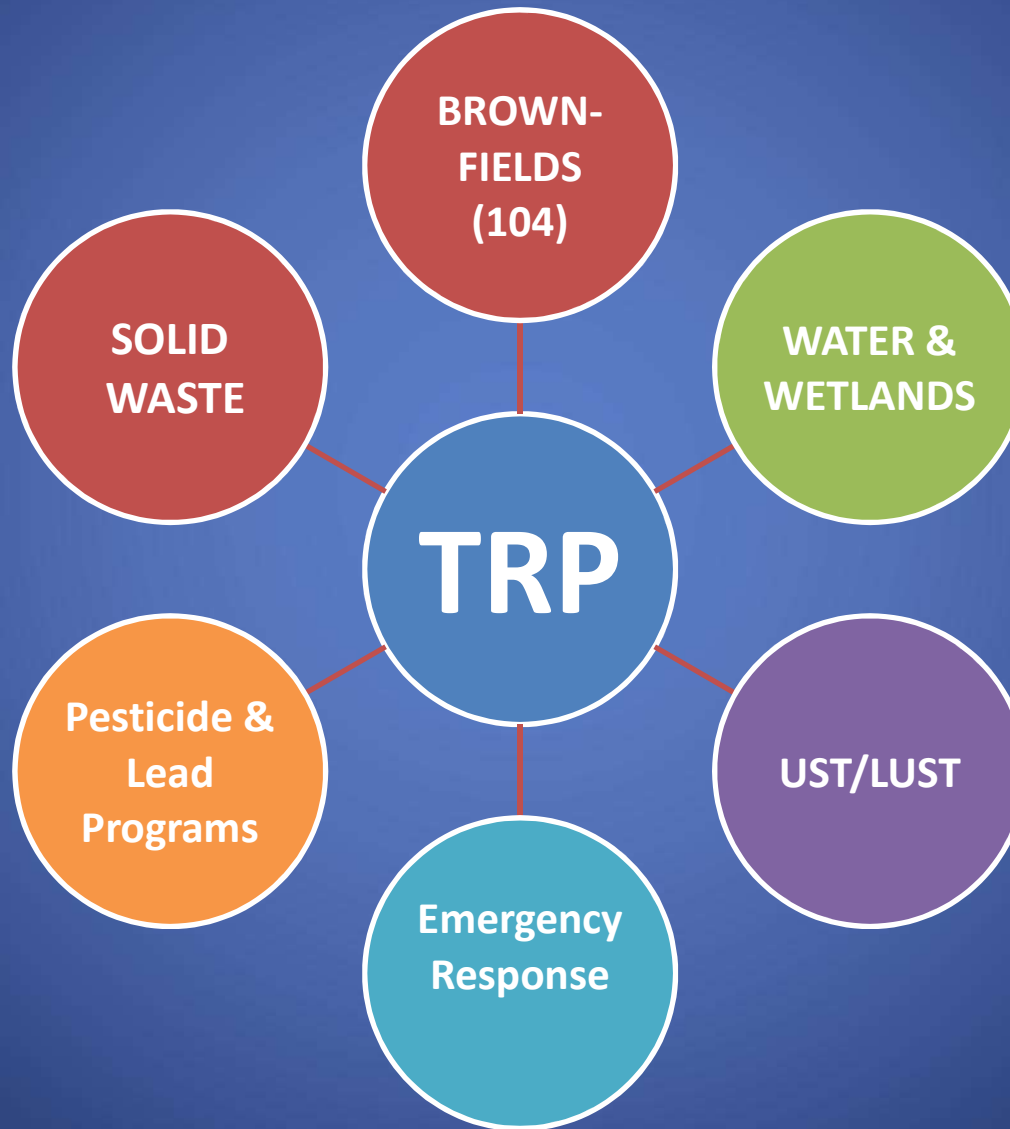


“Other Mechanisms”

“other mechanisms, and resources” may be other authorities or resources that could be brought to bear on a situation to ensure that a party meets their obligations.

This could include the authority or resources of another tribal program or ADEC or a federal agency.

Related Env. Tribal Programs



Other Tribal Programs



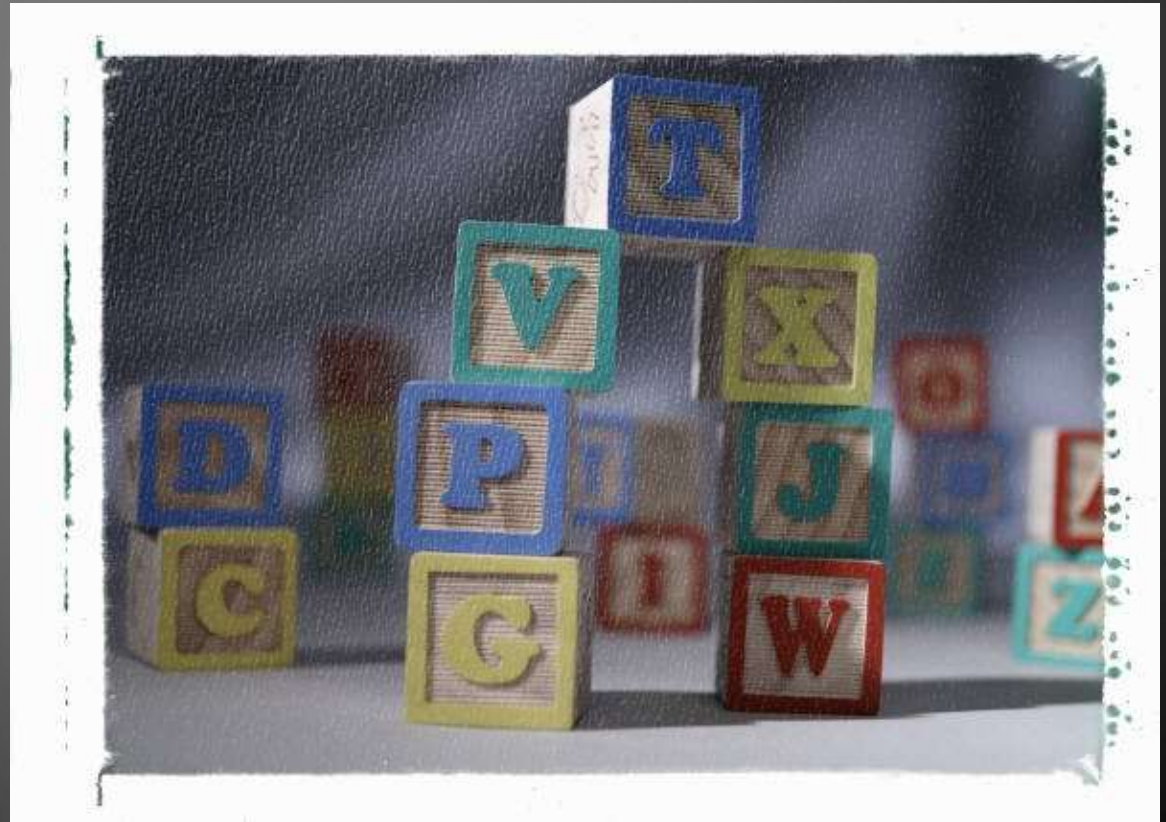
Other Agencies



Look thru your scope
and outside of your box



Know your Govt. Agency alphabet soup





EPA Guidance

The EPA Guidance includes goals of:

- ❖ TRP oversight of response actions conducted under their jurisdiction by other persons or parties; as well as
- ❖ coordination with other agencies and programs

Regional offices and tribes may agree that 128(a) funds may be used for developing better coordination and understanding of other response programs. (ADEC or federal) (i.e., RCRA, CERCLA or USTs)



Coordination could include:

- Ensuring a response action will protect human health and the environment and be conducted in accordance with applicable federal and/or state law;
- Ensuring the necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).



“Other Mechanisms”

Have you tried to learn more about what “other mechanisms, and resources” of another tribal program, ADEC or a federal agency could be brought to bear on a situation to ensure that a party meets their obligations?

- Coordination Meetings?
- Negotiate MOU/MOAs?
- Cross-Training on other programs?



“Other Mechanisms”

Learn more about what “other mechanisms, and resources” of another tribal program, ADEC or a federal agency could be brought to bear on a situation to ensure that a party meets their obligations.

- Coordination Meetings
- Negotiate MOU/MOAs
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Eligible uses of 128(a) funds

Uses include, but are not limited to, oversight of site-specific activities conducted by other parties such as:

- oversight of a response action;
- technical assistance to federal brownfields cooperative agreement recipients (104(k) grants);
- review of site-specific cleanup plans and/or quality assurance project plans (QAPPs);
- auditing site cleanups to verify the completion of the cleanup; and
- meaningful local public participation



Oversight Costs

Costs Incurred for Activities at “Non-brownfields” Sites

Such oversight costs may be grant eligible and allowable if such activities are included in the tribe's work plan in advance.

{What would be a “non-brownfield site” ?}



Tribal vs Federal Program

- The TRP is not a delegated federal program. Therefore, it is not implemented in place of, or in lieu of any federal programs (such as RCRA or CERCLA).
- The TRP was established and authorized under federal law and may be implemented under tribal law or codes and enforced by the tribe in addition to any similar federal programs where a tribe or village has the jurisdiction to do so.

Therefore, there may be situations where both tribal and federal programs apply.



U.S. EPA Programs

U.S. EPA Programs that may relate to or overlap the TRP can include:

- the CERCLA Superfund program to include remedial actions, removals and emergency response;
- the RCRA hazardous waste regulatory program to include corrective action for past contamination at treatment, storage and disposal facilities and the mismanagement of hazardous waste;
- the RCRA Underground Storage Tank (UST) program to include investigation and remediation of Leaking USTs (LUST);



U.S. EPA Programs

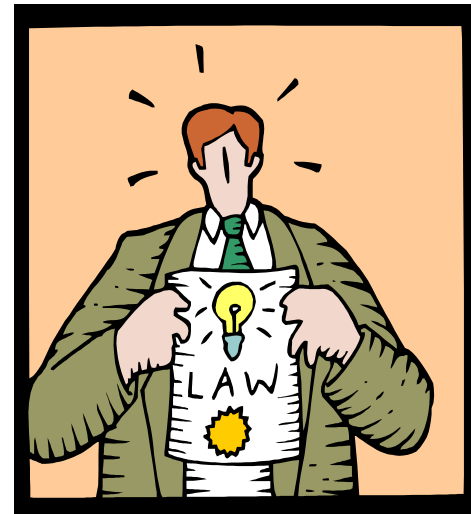
Cont:

- the Asbestos, PCB, Lead and refrigerant regulations and programs under the Toxic Substances Control Act (TSCA) and Clean Air Act (CAA); or
- and other EPA program that regulates hazardous substances, pollutants or contaminants as well as medical/biological waste, petroleum, mining operations or lands or controlled substances.

Be aware of new regulations!

Lead Based Paint Abatement

- On April 22, 2008, EPA published a final rule under the authority of § 402(c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in “target housing” and “child-occupied facilities.”





Tribal Jurisdiction

A tribe may need to coordinate with another agency if they do not have clear jurisdiction to conduct formal oversight and approval of remedial/cleanup actions on a case-by-case basis in consideration of several factors:

- Status and ownership of the site land and adjoining land (i.e. trust, fee, tribally owned, etc.);
- Content of treaties;
- Status of tribal laws and codes;
- Status and content of any agreements or MOA/MOUs;



Oversight: one step removed

Indirect oversight could include the review and comment on another agency's proposed plans and reports as well as the verification and certification of the cleanup/remediation.

Other federal and ADEC programs have their own requirements to seek community comment and input on their decision making and activities.



Assist Other Agencies?

The tribe is strongly encouraged to provide public access to all relevant documents for a response action conducted only under federal jurisdiction (i.e. Superfund, RCRA, LUST or DoD/USACE FUDS) or by the ADEC through the TRP office.

Also, could assist tribal members in understanding what is in the documents



Public Participation

The TRP Public Record and the TRP public outreach and participation program (Element 3) may, at the discretion of the tribe, also be of assistance to the ADEC, U.S. EPA or other federal programs in:

- informing the tribal/village community of proposed or completed activities or actions by other agencies; and/or
- conducting outreach to rural or remote areas as well as to communities with limited experience working with federal agencies.



Combining Efforts

Combine public meetings or forums with other agencies and/or programs:

- Other Tribal programs
- Local community or civic groups
- Local events or conferences
- EPA meetings for Superfund, UST/LUST
- Other Federal agencies (DoD, Army COE)



DOD Activities

The Department of Defense (DoD) Defense Environmental Restoration Program (DERP): funds cleanups and investigations that are managed by their respective military component; Army, Navy, Air Force, Army Corps of Engineers (ACOE) and Defense Energy Support Center (DESC).

The Installation Restoration Program (IRP) and the Military Munitions Response Program (MMRP) address cleanup activities at DoD installations and formerly used defense sites (FUDS).



USACE “Other Mechanism”

The **Native American Lands Environmental Mitigation Program (NALEMP)** was developed in 1996 by the Department of Defense (DoD) to address environmental issues from past DoD activities on Indian lands and Native allotments. The program provides a unique opportunity for Native communities to not only address impacts from past DoD activities on their lands, but also to develop their own environmental programs and expertise.



DOE

The Department of Energy (DOE) Environmental Management Program (EMP): Responsible for the cleanup of sites that were once part of the Nation's nuclear weapons complex.

Several of these sites are close or adjacent to Tribal nations and could impact Indian lands and/or resources.

Consistent with the Department's *American Indian & Alaska Native Policy*, the Environmental Management program maintains cooperative agreements with the Tribal nations to **enhance their involvement in cleanup decisions** while protecting relevant tribal rights and resources.



Other Agencies

Other federal agencies in Indian country that may be funding or involved in the assessment and/or cleanup of a contaminated site can include, but is not limited to:

- The Bureau of Indian Affairs (BIA)
- The Bureau of Land Management (BLM)
- The Army COE- Wetlands program (USACE)
- U.S. Coast Guard (coastal/marine environments)
- Federal Emergency Management Agency (FEMA)



Coordination with the State

The ADEC also has a response program that receives funding under CERCLA 128(a) and it is required to meet the same requirements as the TRP.

Since contaminants do not usually respect political or property boundaries there is a lot of potential for mutual benefit by the coordination of the ADEC and tribal/village response programs and the sharing of information.

The redevelopment or reuse of some brownfield sites may benefit from coordination of the programs as well.



Local Govt.

A nearby town or borough government typically implements functions or programs that could benefit from coordination with the TRP. These can include:

- Redevelopment and reuse of Brownfields;
- EPA 104(k) Brownfield assessment or cleanup grants;
- Solid Waste Management & Disposal (often an important part of a site cleanup);
- Cleanup and prevention of open dumping and compliance with related laws and codes; and
- Emergency Management and Response.



EPA Funding Approval

Coordination of these program requirements, activities and resources could be of benefit to all parties involved.

However, such activities may not be fundable under the 128(a) grant unless approved by the EPA regional office in advance.



How else can other agencies or programs “enhance” my TRP?



DOE will give me a bone that glows in the dark!



Done the research?

- Consulted with other tribes to share experiences and legal research and implementation issues?
- Established coordination with BIA, DOD or other federal agencies to include review of leases and other related processes?



Learning Opportunities

Have you taken advantage of learning from others?

- Assisting ADEC or U.S. EPA staff in planning and conducting cleanups under RCRA, CERCLA and LUST.
- Review and comment on cleanup plans developed by other federal or ADEC. (e. g. Army COE and DOD)
- Accompany and/or oversee a contractor that is conducting an assessment or a cleanup.
- Attend workshops, training and conferences that are relevant (Tribal, ADEC, EPA, ITEP, etc.)



Other EPA Resources

- There may be federal grants available from other EPA programs that could contribute to the enhancement of the TRP or contribute to the funding of specific activities or actions that may not be fundable under the 128(a) grant and/or budget.
- These other programs also have training that may contribute to the knowledge and capacity of the TRP staff.



Other EPA Funding

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

- 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}



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 for more details}



Other Funding

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Tribal Accomplishments

The Tribal 128(a) program has increased the coordination between tribes and other related federal, state and local programs. Some of the first steps most tribes have taken in coordinating with other programs are:

- Direct meetings with other programs and agencies
- Oversight of actions by other agencies
- Technical assistance to the Tribal program
- Joint participation in work groups and planning meetings
- Joint participation in EPA workshops and conferences
- Attending training provided by other agencies and programs
- Networking to establish contacts and working relationships
- Visiting tribal peers on-site to learn and share experiences



Tribal Issues

- Jurisdiction issues are often not understood or clear and complicate the ability to establish clear working relationships with other government entities.
- Limited funding for travel to attend meetings, workshops and other functions that may foster improved coordination and cooperation across government and/or program lines.
- Limited funding for travel to spend time on-site with peers and share experience and knowledge.
- Coordination between multiple government agencies to include federal, ADEC, Boroughs and towns can be difficult and time consuming for everyone.




Lessons Learned

- Cooperation can be is productive.
- Cooperation maximizes the use of everyone's resources.
- Cooperation results in meeting mutual goals easier and faster.
- A lot of misunderstanding between agencies and programs is the result of miscommunication and/or a lack of communication.
- There is more than enough "turf" to go around.
- Field staff are often better at cooperation and coordination of program efforts than higher levels of government.



Further Implementation

- Development of MOU/MOAs with other federal, state and local government agencies to foster coordination and maximize resources.
- Development of ways to work with other agencies and programs to facilitate improvements in public participation and outreach to tribal members and other reservation residents.
- Seek ways to have TRP assist other programs and agencies in accomplishing their mission and meet mutual goals.
- Clarify process of implementing Institutional Controls by tribal/village corporations or government and in coordination with ADEC, BIA and other government entities.

A bald eagle is perched on a snow-covered branch, looking to the left. The eagle has a white head and neck, a yellow beak, and dark feathers on its body. The background is a snowy, overcast sky with bare branches.

END
Tier II
Module II-2