



# Tier II: Module 6

**CERCLA 128(a):  
Tribal Response Program  
Site Specific Activities**

# Site Inventory to Cleanup

Cleanup & Verification



Public Record



Assessment

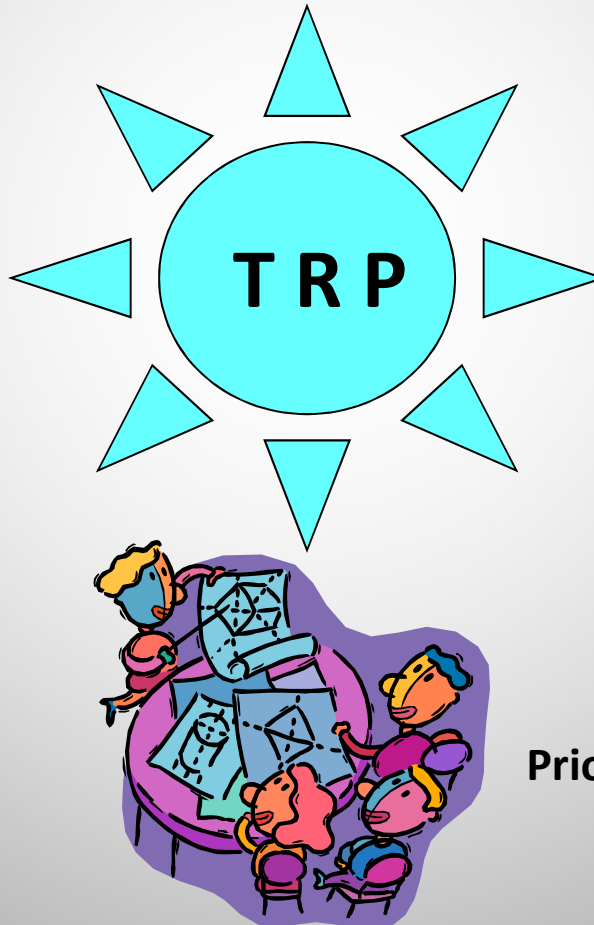
Site Discovery



Inventory

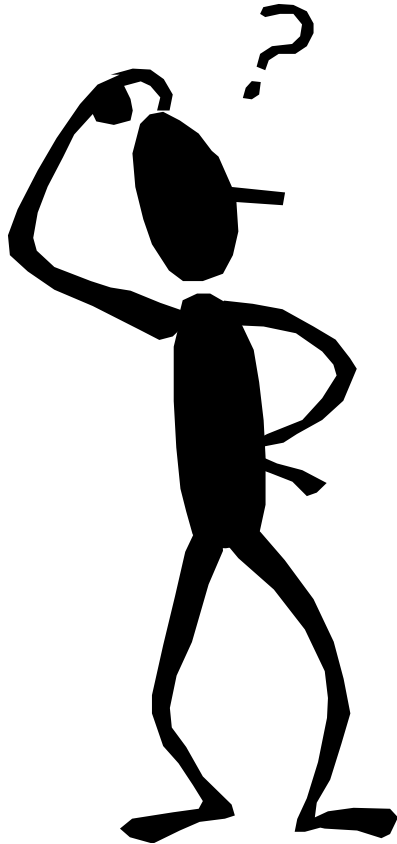


Prioritization

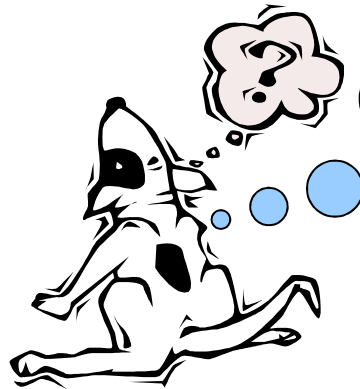




# When can we do “real work”?

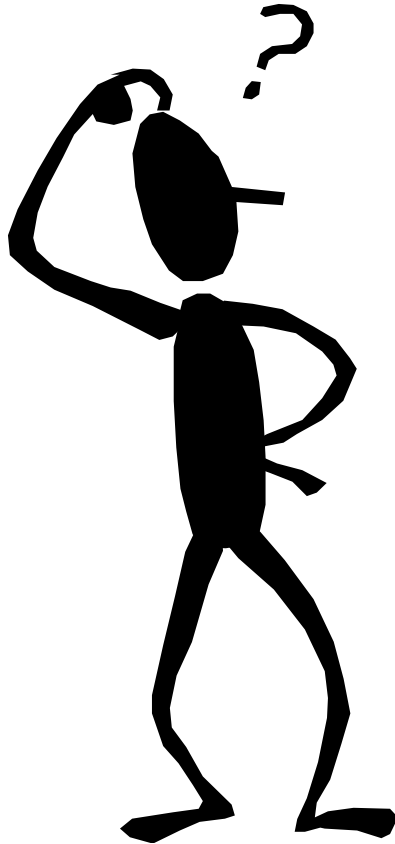


How do we conduct a tribal cleanup of a “Brownfield” or other sites?

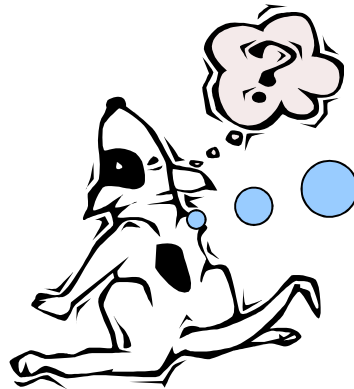




# What site work can we do?



What site activities are fundable under the 128(a) TRP Grant?



You can clean out my dog house for Free!



## The “Law”

The Law does not specifically mention site specific activities under 128(a). However it does state in 128(a)(1)(B):  
*“A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.”*



# US EPA Guidance

A secondary goal of the 128(a) grant is to provide funding for other activities that increase the number of response actions conducted or overseen by a tribal response program.

Therefore, tribes may use 128(a) funds for activities that improve tribal capacity to increase the number of sites at which response actions are conducted under the tribal response program.



# US EPA Guidance

- Eligible grant fundable activities include, but are not limited to, conducting limited site-specific activities provided such activities establish and/or enhance the response program and are tied to the four elements.



# US EPA Guidance

## **Eligible uses of 128(a) grant funds**

**include**, but are not limited to, site-specific activities such as:

- conducting assessments or cleanups at brownfield sites;
- technical assistance to federal brownfields cooperative agreement recipients;

(such as a TRP assisting another tribal entity or a local community with a 104(k) grant)





# US EPA Guidance

## **Eligible uses of 128(a) grant funds include:**

- development and/or review of site-specific Quality Assurance Project Plans (QAPPs);
- preparation and submission of Property Profile Forms and entering data into ACRES; and
- auditing site cleanups to verify the completion of the cleanup.  
(including past cleanups)



# US EPA Guidance

- EPA approval is required before any 128(a) grant funds can be obligated or expended on site specific activities.
- Section 128(a) funds for site specific activities can only be used for assessments or cleanups at sites that meet the definition of a brownfield as defined under CERCLA 101(39). This includes petroleum contaminated brownfield sites.



# US EPA Guidance

- This approval is normally obtained by providing EPA with sufficient information, through submission of a “**Site Specific Eligibility Determination**” request, to review the site eligibility for such funding and compliance with the Law and applicable EPA policies.

(consult EPA Region 10 for specific information needed)



# EPA Review of Request

Upon request to EPA for funding for a site specific activity the EPA may take into consideration several factors including:

- Is the site eligible in accordance with the Law and EPA policy?
- Does the tribe have the basic capabilities and knowledge to initiate and carry out the site specific activity?
- Does the tribe have the necessary authorities and/or agreements in place to initiate and carry out the activity?
- Does the tribe have the necessary contracting procedures and capabilities in place?
- What technical assistance may be needed and what is available?



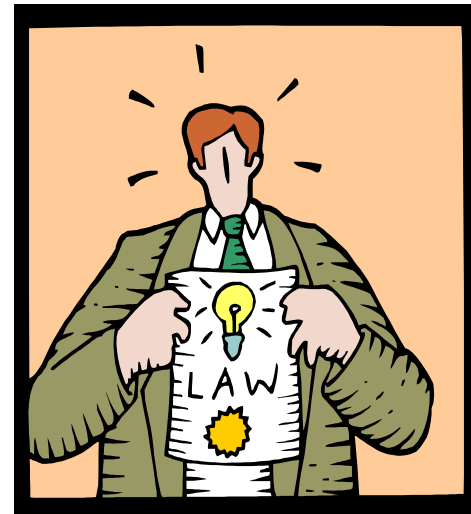
# US EPA Guidance

- No more than \$200,000 per site can be funded for assessments or cleanups with Section 128(a) funds.
- Absent EPA approval, the tribe may not use funds awarded under the 128(a) grant to assess or cleanup sites owned or operated by the grant recipient.

# 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.”



RRP Final Rule



# General Discussion

## Site Specific Activities:

- ✓ Assessments
- ✓ Verification
- ✓ Cleanup

# Acronyms & Terms

## (the language of cleanup)

- **TBA:** Targeted Brownfields Assessments
- **TRP:** Tribal Response Program
- **DQO:** Data Quality Objectives
- **QMP:** Quality Mgt. Plan
- **QAPP:** Quality Assurance Project Plan
- **FSP:** Field Sampling Plan
- **Phase I:** 1<sup>st</sup> Phase of a formal brownfield assessment with no sampling
- **Phase II:** 2<sup>nd</sup> Phase of a formal brownfield assessment with sampling
- **Phase III:** Cleanup plan development and cost estimate





## Why do it?

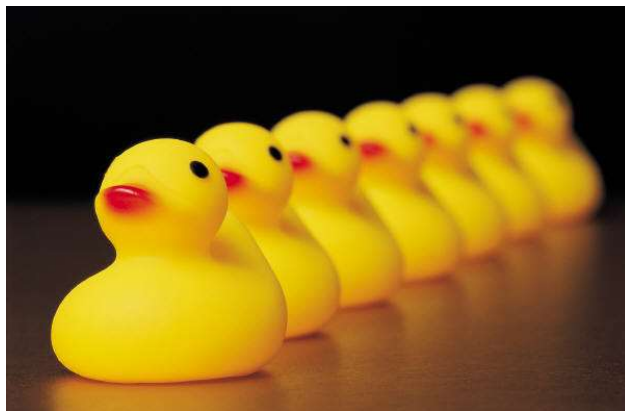
The best way to develop tribal capacity to conduct oversight of assessment and response actions is to actually conduct such activities.

This site specific work will therefore increase the knowledge and experience of the staff and therefore increase the number of response actions conducted or overseen by a tribal response program.



# US EPA Approach

- Attend necessary training
- Understand the (EPA) process and guidance before you conduct a tribal response action (cleanup);
- Avoid making a problem bigger or worse;
- Have your “ducks in a row”



- ✓ Attend necessary training
- ✓ Obtain all necessary approvals
- ✓ Prioritize Sites
- ✓ Establish Authorities
- ✓ Conduct Assessments
- ✓ Cleanup a Site
- ✓ Verify & Certify



# EPA Requirements

**States & Tribes may develop their own cleanup process.**

**However,** TRP grantees utilizing TRP grant funds to conduct assessments or a response action may also be required to comply with the U.S. EPA procedures and technical requirements, which may include, but are not limited to:

- Quality Assurance Project Plans (QAPP) for:
  - ✓ Phase II Assessments
  - ✓ Remedial sampling (before, during, after)
  - ✓ Verification sampling
  - ✓ Post Remedial monitoring



# EPA Requirements

## Threatened and Endangered Species:

- Grantees are required to consult with EPA prior to conducting any on-site activity (such as invasive sampling or cleanup) that may affect historic properties or endangered species to ensure that the requirements of federal laws are met.



# Historic Properties

- There is an Alaska State Historic Preservation Office (SHPO) within DNR:  
<http://dnr.alaska.gov/parks/oha/shpo/shpo.htm>
- EPA is not involved in any submittals to the AK SHPO office unless they are the lead conducting (or funding) the work. If EPA is funding invasive assessment and/or cleanup work, they would be required to coordinate with SHPO the same as state does on projects that use either state or federal monies.
- There also may be related tribal requirements to be met such as a Tribal Historic Preservation Office consultation (THPO).



# Site Assessments: Phase I

The Phase I Site Assessment is based upon visual site inspection, oral history, records, past reports and various other sources of information on current past practices or conditions at the site. However, it does **not** include actual media sampling and analysis for contaminants. (That is a component of a Phase II Site Assessment)

# Tribal Assessments: (Know the Hazards)





Manokotak, AK Elders identify Brownfield sites





## Site Assessments: Phase II

The Phase II Environmental Site Assessment involves on-site sampling of media (air, water, soil, sediment and groundwater) and analysis of the samples for contaminants.

- There are also ASTM guidelines for conducting Phase II Environmental Site Assessments.
- A Phase II funded by EPA will require the development of a Quality Assurance Project Plan (QAPP) and a site specific Sampling and Analysis Plan (SAP) and Health and Safety Plan (HSP)  
*{subject to EPA review and comment}*



# Site Assessments

The person who supervises or oversees the conduct of an ASTM assessment and signs the final report must meet the definition of an “Environmental Professional” as defined under 40 CFR §312.10.

A person that does not qualify as an “Environmental Professional” may assist in the conduct of the investigation if he or she is under the responsible charge of a person meeting the definition. (This is a good way to get the experience to become an “EP”)

*Note: Some qualified Tribal staff have conducted Phase I & II Assessments.*



# Tribal Response Actions





# Tribal Response Actions

- From the Congressional Record of the legislation it is clearly not the intention of Congress to require tribes to follow all of the requirements of the National Contingency Plan (NCP: 40 CFR Part 300) when conducting a response action under 128(a).
- The steps or process required may be mandated by the governing law, process or requirements that the action is conducted under (Tribal, state and/or federal) and/or the EPA TRP grant.

*{Where multiple jurisdictions or requirements may apply the steps or process to be implemented may need to be resolved before beginning site activities.}*

# TRP Cleanup Process

**Decision: Cleanup Needed**

**Determine 128(a)  
Site & Funding Eligibility**

- EPA Approval

**Hire Env. Professional/Contractor**

- Request for Proposal(s) (RFP)
- Negotiate Contract(s)

**Develop Cleanup Documents:**

- Cleanup Alternatives
- Cleanup Plan/Cost Estimate
- Supporting Documents (QAPP/FSP/H&SP)
- Reports

**Establish  
Administrative Record**

**Add to Public Record**

**Public Participation:**

- Community Involvement Plan
- Notice of planned cleanup
- Public comment
- Ongoing communication

# TRP Cleanup Process

## Conduct Cleanup

- Oversight of field work
- Review data & reports

## Cleanup Verification

## Cleanup Certification

## Post Cleanup Activities:

- Monitoring?
- Institutional/Eng. Controls?
- Final Report
- Reporting (Tribe, EPA, Public)

Complete  
Administrative Record

Update Public Record

## Public Participation:

- Final meeting
- Report results of cleanup
- Need for eng. Or ICs



# Response Action Alternatives

A range of alternatives is usually considered in the development of a TRP Response/Cleanup Plan and then a decision is made, with community input, on the appropriate response to take, and the appropriate cleanup levels to be obtained.

7 factors to be considered can include:

- Protection of human health and the environment
- Effectiveness
- Implementability
- Cost
- compliance with all applicable laws, regulations and codes
- long and short term effectiveness
- community acceptance



# Remedial Process: ABCA

## **Analysis of Brownfield Cleanup Alternatives**

**(ABCA):** The analysis of reasonable alternatives should:

- ✓ include no action; and
- ✓ consider site characteristics, surrounding environment, land-use restrictions, potential future uses, applicable laws and cleanup standards and goals.

(For cleanup of brownfield petroleum-only sites, an analysis of cleanup alternatives should include considering a range of proven cleanup methods)

The ABCA should be signed by an authorized representative of the tribe.





# Response Action: Plan

A typical TRP Cleanup or Response Plan should include:

- Detailed site information or reference to assessments/reports
- Brief review of the alternatives considered
- Detailed version of the alternative(s) selected
- Cleanup goals or standards to be met
- Cost estimate(s)

and



# Response Action: Plan

A typical TRP cleanup or response plan should include a: (cont.)

- QAPP & Field Sampling and Analysis Plan(s) (FSAP) for:
  - Pre-response update of field conditions and contamination
  - Tracking progress of the cleanup
  - Confirming results of the cleanup
  - Verifying the cleanup (third party?)
  - Post cleanup monitoring for a period of time (if needed)
- Health and Safety Plan (HSP) for site work
- Engineering and/or institutional controls necessary during the response
- Engineering and/or institutional controls necessary after the response



# Remedial Planning

**In Planning a Response Action there are many things to take into account that can affect the timeline:**

- EPA and other reviews of plans, reports and documents;
- The contracting process and timing;
- The time of year for field work and weather;
- Tribal and other community activities or issues;
- Unplanned events or discoveries;
- Opposition to proposed plan; and
- “Other Things”



# Remedial Process: CIP

## **Site Specific Community**

**Involvement Plan:** describe how the tribe plans to provide the public with prior notice and opportunity for comment on the proposed response action.

**ALSO:** Update Public Record

*(EPA review of the CIP may be required)*



# Remedial Process: CIP

## **At a minimum, public involvement for cleanup activities should include:**

- Notice and opportunity for the public to provide comments (written or oral) on the analysis.
- Written responses to significant and appropriate comments, and documentation of any changes to the remediation/cleanup plan.
- Preparation of an Administrative Record and notification to the public of its availability for inspection at a location convenient to the targeted population and general public.



# Remedial Process: AR

The Administrative Record should contain the documents that form the basis for the selection and implementation of a cleanup plan.

Documents in the administrative record should include:

- ✓ the analysis of alternatives,
- ✓ site investigation reports,
- ✓ the remediation/cleanup plan,
- ✓ cleanup standards used,
- ✓ responses to public comments, and
- ✓ verification measures taken to ensure that cleanups are complete.



# Remedial Process: Implement

## Implementing Remediation/Cleanup:

- ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. *{conduct frequent & thorough oversight}*
- Occupational safety and health: comply with either all applicable General Industry standards (29 CFR Part 1910) or all applicable Construction standards (29 CFR Part 1926), depending on work operations at the site.
- Also know what Tribal worker standards may apply at the site.



**Plan should include the safety of the community**





# Remedial Process: Site Work

## Implementing Remediation/Cleanup:

- If a site is determined to be a “hazardous waste site,” that site must comply with the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard 29 CFR. §1910.120.

(note: A “hazardous waste site” is a site that contains or manages a hazardous waste under RCRA Subtitle C)

{ How is Asbestos regulated? }



# Remedial Process: Verify

Document all steps and actions taken to ensure that the cleanup is adequate and protective.

- Verify the results of the cleanup action to ensure that it meets the goals of the cleanup plan.
- Issue a Final Report, Letter or other documentation that certifies the cleanup is complete.
- This documentation needs to be included as part of the Administrative Record.

(These steps and actions are related to verification and certification of a cleanup in TRP Element 4)



# Remedial Process: Follow up

**In the event of an incomplete or inadequate cleanup that is:**

- not fully implemented; or
- fails to meet the required goals

Ensure that the site is secure and notify the appropriate tribal, state and/or federal agency and the U.S. EPA should additional activities become necessary.  
*(This may also require implementation of institutional and/or engineering controls)*



# Response Action Reports

Reports typically generated are:

- Results of any required field sampling and/or analysis
- Interim Progress Reports (if appropriate)
- Final Completion Report
- Confirmation/Verification Report(s)
- Post Cleanup/Response Monitoring Reports (if appropriate)
- Other reports required by the contract, Tribe, EPA, or ADEC, etc.

*Note: need non-technical summaries?*



# Remedial Reporting

## **EPA Grant Reporting:**

- TRP grant work plans & reports that include funding for “*other site-specific related activities*” must include a description of the site-specific activities.
- The EPA Region 10 should be consulted for specific reporting required, including the “Property Profile Form” and “ACRES”.
- The reporting needed for the community and the Tribal or state government may be different.

{NOTE: Keep a daily log of the remedial activities and take lots of pictures}



# TRP vs Superfund Response

The Superfund remedial process operates under the National Contingency Plan (NCP) in 40 CFR Part 300. For those tribes that have a Superfund NPL site on or near their lands, (or DoD/DOE Restoration Sites), and are familiar with the terminology that is applied to those sites a comparison of terms may be helpful.



# TRP vs Superfund Response

<b>TRP RA</b>	<b>Superfund RA</b>
Brownfield Inventory	Preliminary Assessment (PA)
ASTM Phase I	Site Investigation (SI)
ASTM Phase II	Remedial Investigation (RI)
Analysis of Brownfield Cleanup Alternatives (ABCA) (aka Phase III)	Feasibility Study (FS)
Response Action Decision	Record of Decision (ROD)
Response Action	Remedial Action (RA)

NOTE: these are not exactly the same activities



# Federal ROD Criteria

## Nine EPA Record of Decision Criteria:

- 1) *Overall protection of human health and the environment*
- 2) *Compliance with ARARs\**
- 3) *Long-term effectiveness and permanence*
- 4) *Reduction of toxicity, mobility, or volume through treatment*
- 5) *Short-term effectiveness*
- 6) *Implementability*
- 7) *Cost*
- 8) *State acceptance\**
- 9) *Community acceptance*

*\*not applicable to Tribes*





# Superfund 5 yr. Review

A Superfund NPL site must conduct a review of the remedy every 5 years to ensure that it is still protective of public health and the environment. This can take into account:

- ✓ changes in site conditions,
- ✓ land use,
- ✓ knowledge of the fate and transport of the contaminants; and/or
- ✓ the toxicology of the contaminants.



## Other Options

- EPA or ADEC Targeted Brownfield Assessments (TBA/DBAs) conducted using their contractor (no grant funds); or
- EPA or ADEC “Removal Action” for elimination of an imminent hazard.
- Action by another federal agency or private party



# Tribal Accomplishments

- Many Phase I and II ESAs
  - ✓ Tribal/Consortium ESAs
  - ✓ US EPA TBAs (11)
  - ✓ ADEC DBAs
- Response Actions/Cleanups in coordination with other federal agencies (DoD/FUD sites)
- Conducting Verification study (Yakutat)



# Tribal Issues

- Determination of jurisdiction, or clear lack of such, can be a problem;
- Tribal ownership and/or liability in the contamination of a site can prevent or delay approval of use of 128(a) grants funds;



# Tribal Issues

- Many tribes do not have the policies or procedures in place to:
  - ✓ conduct a cleanup;
  - ✓ make decisions on cleanup standards; or
  - ✓ implement institutional controls;
- Many existing tribal contracting policies and procedures are not appropriate or adequate for hiring or overseeing a remediation contractor.
- Community participation not adequate



# Lessons Learned

- Verify property lines, status and ownership;
- You can never do too much community outreach about a site and the activities being conducted there (do it early and often);
- Be cautious of “free” or non-cost actions or services;
- Be prepared to deal with major changes in site conditions or waste issues;
- Know how to deal with a poor performing contractor.



# Lessons Learned

- Determine in advance who needs to make what decisions;
- Determine in advance who will verify the site work completion and how;
- Do not overlook potential partners for funding or seeking other grants for site specific work; and
- Understand the “Big Picture” as well as local “issues”.



# Further Implementation

- Increased collaboration and sharing among tribes of procedures and policies that work in the tribal situations;
- Inter-tribal mentoring and experience sharing of contracting and site specific experiences;
- More opportunities for tribal staff to learn site work in the field and shadow or observe experienced staff and contractors.



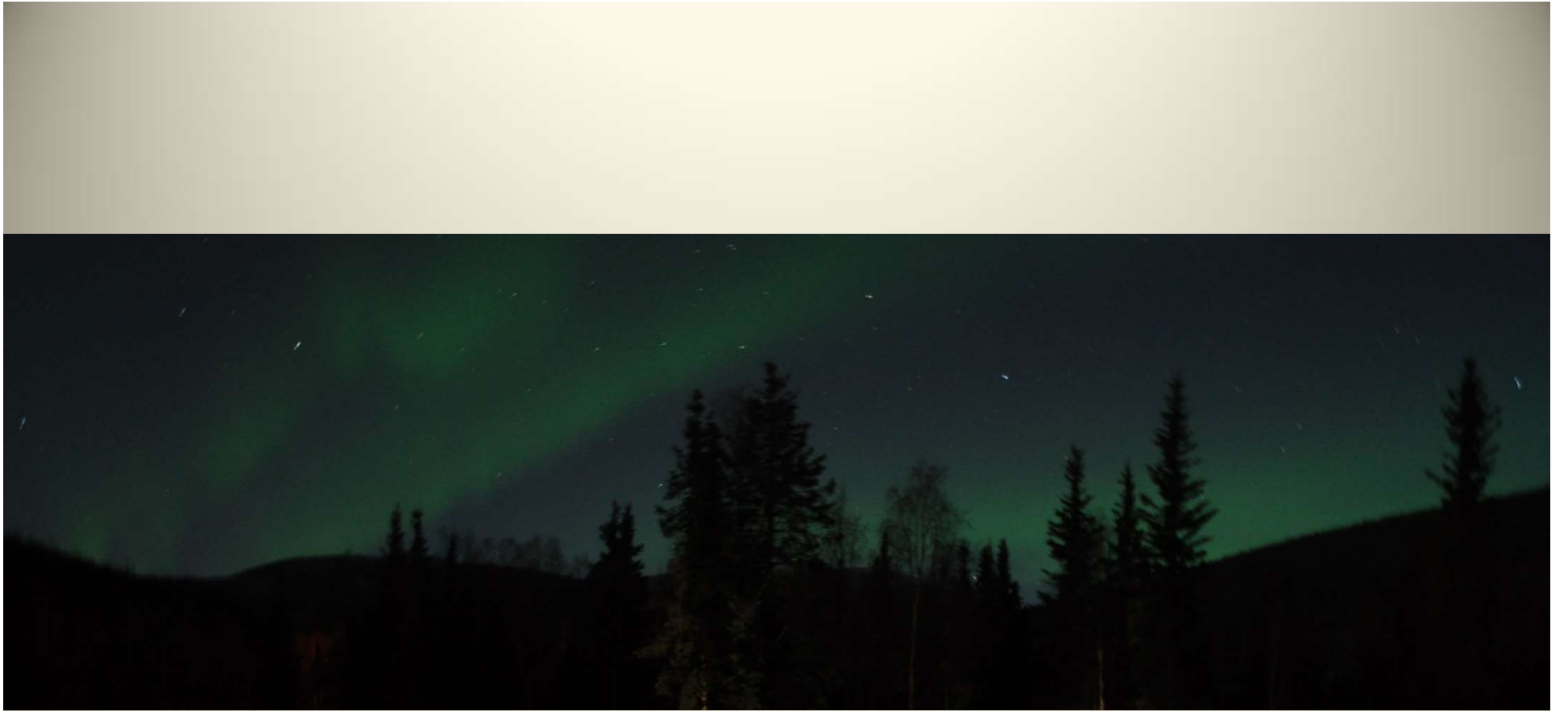


**Port Heiden , AK Tribal staff training for conducting on-site cleanup work for the DoD**

# CELEBRATE YOUR ACCOMPLISHMENTS!



*Come celebrate with us!*



**The End**