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## Brownfields Tribal Response Program 101 ITEP training series

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## Brownfields History:

Prior to the BF law "Polluter Pays" 1970-80s

- ▶ CERCLA Elements (Comprehensive Environmental Response, Compensation, and Liability Act)
  - ▶ Strict: Liability may exist without fault
  - ▶ Joint and Several: If two or more parties contributed to the release, and unless a party can show that the injury or harm at the site is divisible, any one or more of the parties can be held liable for the entire cost of the cleanup.
  - ▶ Retroactive: Liability may exist even if the contamination occurred before CERCLA, which was enacted in 1980.

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## Brownfields Law Changes to CERCLA

### Small Business Liability Relief & Brownfields Revitalization Act

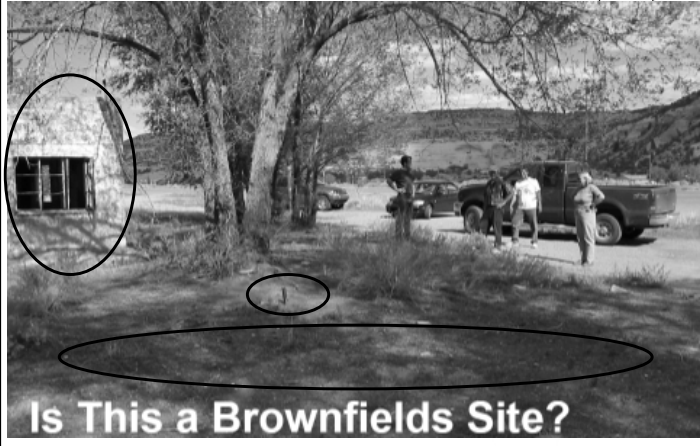
- ▶ "Brownfields Law" signed in January 2002
- ▶ Expanded funding for brownfields assessment and cleanup competitive grants
- ▶ Clarified liability protections
- ▶ Enhanced state response programs including creating a federal superfund bar
- ▶ Established state and tribal programs

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## Brownfields: Federal Definition

- ▶ *Real property*
- ▶ *Expansion, redevelopment, or reuse*
- ▶ May be complicated by the *presence or potential presence of a hazardous substance, pollutant, or contaminant or property that is a mine scarred land*
- ▶ Originated primarily for urban blight
  - ▶ *Now open to any site with potential environmental concerns for which there is a community-developed plan for reuse*
- ▶ *Funding depends on meeting the definition!*

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Brownfields come in all shapes & sizes

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State and Tribal Response Programs  
(aka 128(a) Program)

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**Purpose**

A State or federally recognized Indian tribe may use a grant... to establish or enhance the response program of the State or Indian tribe"

Response Program Overview

- ▶ What is it for?
  - ▶ To "establish and enhance" a response program
- ▶ Who is eligible?
  - ▶ Any federally recognized Indian tribe
  - ▶ States
- ▶ Is it a competition?
  - ▶ No, it's a non-competitive application, but sharing it with 50 states, other tribes, and territories

## Response Program Overview

- ▶ Primary Purpose: to “establish or enhance” a response program
  - ▶ States and Tribes define it’s “response program”
  - ▶ Allowable activities are broad and include:  
Hiring staff, developing regulations, ordinances, plans, outreach, community involvement, training, etc.

## State and Tribal Response Programs 128(a) Program

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### Required Tasks

#### ▶ Four Elements

1. **Timely survey and inventory** of brownfields sites in state or tribal land
2. **Oversight and enforcement** authorities or other mechanisms and resources
3. Mechanisms and resources to provide meaningful opportunities for **public participation**
4. Mechanisms for **approval of a cleanup plan and verification and certification** that cleanup is complete

## Timely Survey and Inventory of Brownfield Sites

- ▶ Inventories can vary in scope
- ▶ at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their tribal lands.
- ▶ Inventories should evolve to a prioritization of sites based on community needs, planning priorities, and protection of human health and the environment.

## Oversight and enforcement authorities

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

## Mechanisms and resources to provide meaningful opportunities for public participation

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- ▶ public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- ▶ prior notice and opportunity for meaningful public comment on cleanup plans and site activities including input into the prioritization of sites; and
- ▶ a mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site — located in the community in which the person works or resides — may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

## Mechanism for approval of a cleanup plan and verification and certification that cleanup is complete

- ▶ to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete.
- ▶ **Example:** Written approval by a state or tribal response program official of a proposed cleanup plan.

## Response Program - The “Public Record”

- ▶ To continue to receive funding, the tribe must establish and maintain a “public record” which is a record of sites at which...
  - ▶ response actions have been completed in the previous year and are planned to be addressed by the tribal program in the upcoming year
  - ▶ And that identifies whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, identifies the institutional controls relied on in the remedy.

## Other Eligible Activities

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- ▶ Enhance the response program

### Optional Tasks

- ▶ Site-specific activities
- ▶ Environmental insurance
- ▶ Revolving loan fund

## Questions ??

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