



Tier 1 – Establishing a Tribal Response Program

Module 1: Purpose and Scope of the Tribal Response Program

Understanding why CERCLA 128(a) Tribal Response Program (TRP) was created and what you can accomplish for your Tribe

TribalTAB.org

What is the TRP for?

- ❖ Identifying and assessing brownfields
 - ❖ *What is a brownfield? (See Tier I Module 3: Element 1)*
- ❖ Tribes protecting public health and the environment
- ❖ You and your community!



What is the TRP for?

Responding to Past, Present, and Future Releases of:

- ❖ Hazardous substances, pollutants, or contaminants;
- ❖ Petroleum;
- ❖ Controlled substances (e.g., methamphetamines) and;
- ❖ Releases from mine-scarred lands





[Click to play video, which will open in YouTube.](#)

Video 1.1: TRP Staff Knowledge

Ina Nez Perce

***Director of Tribal Environmental Department,
Fort Belknap Indian Community, MT***

Learn the Language of TRP Acronyms

Know the government agencies “alphabet soup”

- | | |
|----------|------------|
| ❖ EPA | ❖ RCRA |
| ❖ QAPP | ❖ TSCA |
| ❖ FSP | ❖ CWA |
| ❖ HSP | ❖ UST/LUST |
| ❖ RQ | ❖ TBA |
| ❖ IC | ❖ SNAFU |
| ❖ PPM | ❖ ND |
| ❖ CERCLA | ❖ Etc. |



Note: never trust an acronym – look it up!





Click to play video, which will open in YouTube.

Video 1.2: BrownSfield

Lana Johnson

TRP Coordinator, Oglala Sioux Tribe, SD



Click to play video, which will open in YouTube.

Video 1.3: Traditional Purpose of a TRP

Lyle Gwin

TRP Coordinator, Three Affiliated Tribes, ND

TRP is intended to address:

Brownfields, big & small, and other sites - past, present, and future



TRP is intended to address:

Releases of “hazardous substances, pollutants, or contaminants”...
(as defined under several laws)



TRP is intended to address:

Asbestos and Lead-Based Paint



TRP is intended to address:

Releases of petroleum



TRP is intended to address:

Releases of controlled substances (ex: meth labs)



TRP is intended to address:

**Mine-scarred
lands**





Before:
Change this...

After:
...to this.
(and eventual reuse)





Before:
Replace this...

After:
...with this.

(Southern Ute Tribal Multi-purpose Building)



**Clean up and
Replace This...**





...With These.

Northern Cheyenne Tribe
Lame Deer, Montana



The “Law”

- ❖ Small Business Liability Relief and Brownfields Revitalization (SBLRBRA, hereafter referred to as the “Brownfields Law”) was passed by Congress in 2002
- ❖ Amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, *aka* Superfund)



The “Law”

❖ Added to Section 101 (Definitions):

(39)(A) IN GENERAL. – The term “*brownfield site*” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.



Translation?

What the Brownfields Law actually means

- ❖ Buildings and/or land/waters that *may be* contaminated with one or more hazardous substances and the *possible* contamination is preventing or discouraging use or restoration of those buildings or land, as well as posing a risk to public health and safety and/or the environment.



The “Law”

❖ Added: Section 128(a) ASSISTANCE TO STATES (1) IN GENERAL. -

(A) STATES. – The Administrator may award a grant to a State or **Indian Tribe** that: (i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements.



Tribal Response Program

❖ Section 128(a) created the:

“Tribal Response Program” (TRP)

❖ This is significant in that it treats Tribes the same as states!



The “Law”

Section 128(a)(1)(A)(i) lists the four elements of a State or Tribal Response Program:

1. Timely survey and inventory of brownfield sites
2. Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that a response action will protect human health and the environment



The “Law”

Section 128(a)(1)(A)(i) lists the four elements of a State or Tribal Response Program:

3. Mechanisms and resources to provide meaningful opportunities for public participation
4. Mechanisms for approval of a cleanup plan, and a requirement for verification 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



The “Law”

Also:

- ❖ Section 128(b)(1)(C) requires a “Public Record”
 - The Public Record...
 {information on cleanup activities}
 and
 - The Public Record shall contain information on the use of
 “Institutional Controls” in the remedy of a site.



The “Law”

Notes:

- ❖ Congress and the Law refers to both “response actions” and “cleanups” and the terms are used interchangeably.
- ❖ Although Section 128 was originally titled “State Response Programs” it was later amended to “State and Tribal Response Programs”*

**Federal Register October 25, 2016; effective November 1, 2016*



128(a) Grant Awarded:

- ❖ To establish and/or enhance a response program
- ❖ To take reasonable steps to include each of the Four Elements
- ❖ To establish and maintain a Public Record
- ❖ And to increase the capacity of a Tribe to assess and cleanup contaminated sites and other releases



The “Law”

Notes:

- ❖ For the purpose of this program, the term “**Indian Tribe**” means any federally recognized Indian Tribe, band, nation, or other organized group or community, including any Alaska Federally Recognized Tribe (but **not** including any Alaska Native regional or village corporation), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- ❖ **Tribal consortiums** are also eligible for funding under this program.



Goals of EPA TRP Funding

Generally to increase **Tribal cleanup capacity** and:

1. To ensure that Tribal response programs include, or are taking **reasonable steps** to include certain elements; and
2. To provide funding for **other activities*** that increase the number of response actions conducted or overseen, by a Tribal Response Program.

**including Site Specific Activities*



128(a) Grants

- ❖ These are not competitive grants
- ❖ These are not the same as Section 104(k) Brownfields Assessment or Cleanup Grants
- ❖ These are Cooperative Agreements

(Note: See Tier I Module 9 and Tier II Module 8 for more details on TRP “Grants” and Grants Management)



128(a) Guidance

U.S. EPA Office of Brownfields Land Revitalization issues an annual 128(a) funding guidance each Fall*:

“Funding Guidance for State & Tribal Response Programs, Fiscal Year 20xx”

NOTE: This guidance is supplemented by the EPA Regions

*see Funding Guidance: www.epa.gov/brownfields/state-and-tribal-response-program and any supplemental EPA Regional Guidance



Impacts of 128(a)

- ❖ Empowered Tribes to identify, inventory, assess, and cleanup contaminated sites in Indian country **not otherwise being addressed**.
- ❖ The TRP has documented hazardous releases at some sites that have compelled a response action by federal agencies or other entities.
- ❖ Enabled the Tribes to **apply for grant funds** to address some sites or take action themselves on other sites.
- ❖ A big step forward in exercising **Tribal sovereignty and self implementation of Tribal laws and codes** to address such problems and prevent their reoccurrence.



Impacts of 128(a)

NOTE: All of these impacts may vary in their implementation from Tribe-to-Tribe depending on the provisions of treaties and other federal laws of acts of congress and any agreements or MOA/MOUs the Tribe may have with federal agencies or states.

Consult appropriate legal expertise for any specific issues that may arise.



Impacts on Other Programs

- ❖ Addressing solid waste issues including illegal and **open dumping** & screening open dump sites for hazards;
- ❖ Development of **Tribal waste management laws/codes**;
- ❖ Development of **civil compliance and enforcement** procedures;
- ❖ Assisting with addressing **lead and asbestos exposures** and abatements;
- ❖ Assisting with development of **Tribal emergency response** capacity;
- ❖ Assisting with addressing **leaking underground storage tanks** (LUST) problems;



Impacts on Other Programs

- ❖ Preventing or addressing **releases** from poor waste management practices;
- ❖ Assisting Tribal economic development or property offices with “**Due Diligence**” or “**All Appropriate Inquiry**”;
- ❖ Assisting with development of Integrated Solid Waste Management Plans (**ISWMPs**); and
- ❖ Creating public outreach materials and conducting public meetings and forums, sometimes in **traditional languages**.



Tribal Issues

- ❖ Defining **Tribal jurisdiction** for imposing or enforcing Tribal civil laws and codes on members vs non-members and various land status (trust, fee, etc.);
- ❖ Researching the history and **locating documents** for Tribal and other property;
- ❖ How to impose “**institutional controls**” on land with differing status and coordinate such controls with federal agencies (BIA, BLM, etc.);
- ❖ Protection of **sacred and culturally sensitive sites** and related information;
- ❖ **Coordination** with multiple Tribal and federal authorities and agencies.



Tribal Lessons Learned

- ❖ There are many **more brownfields** or other sources of releases in “Indian country” than originally anticipated;
- ❖ **Open dumping** and poor waste management create releases of hazardous substances;
- ❖ Most **old structures have asbestos and lead paint** problems;
- ❖ **New Tribal laws, codes**, and procedures and policies are required to fully implement the program; and
- ❖ There is **a lot to learn**. A lot of training is required.



Further Implementation

- ❖ New discoveries of past releases or new releases of hazardous substances, pollutants or contaminants;
- ❖ Continuing need to monitor and address activities that tend to create new releases from accidents and spills; industrial activities; mining and oil/gas exploration and production; construction and demolition; fires, aging existing buildings; and
- ❖ Continuing need to monitor and address releases from waste management facilities and illegal dumping.
- ❖ There is also the potential to provide technical support to other Tribal programs and offices.



EPA Tribal Partnership

“Section 128(a) strengthens EPA’s partnerships with states and Tribes and recognizes the response programs’ critical role in oversight of cleanups. In addition, in contrast to some other environmental laws, the Tribes are treated as an equal partner and do not need to petition the EPA for 'treatment as a state' to implement the response program.”





Click to play video, which will open in YouTube.

Video 1.4: Future of TRP

Dan Heffernan

U.S. EPA Region 8



Click to play video, which will open in YouTube.

Video 1.5: Spiritual Leader
Boyd Lopez
Ute Mountain Ute Tribe, CO

We Would Like to Hear From You

Questions about this Module or need other
brownfields assistance?

Contact the Tribal TAB team at
Tribal-TAB@ksu.edu



Scan this QR image to provide feedback on this TRP Module

TribalTAB.org

