



Tier 2 – Enhancing a Tribal Response Program

Module 4: Enhancing the Public Record and Institutional Controls

How Tribes have gone beyond the basic requirements of the Public Record to enhance their public outreach and participation

TribalTAB.org

A stylized graphic of a bridge with a series of triangular trusses, rendered in a light blue color, spanning the top of the slide.

**How do I enhance the
“Public Record”?**

The “Law”



128(b)(1)(C) PUBLIC RECORD: States and Tribes must:

- ❖ Maintain and update, at least annually, or more often as appropriate, a public record that includes the **name and location of sites at which response actions have been completed during the previous year;**
- ❖ Maintain and update, at least annually, or more often as appropriate, a public record that includes the **name and location of sites at which response actions are planned in the next year;**



The “Law”

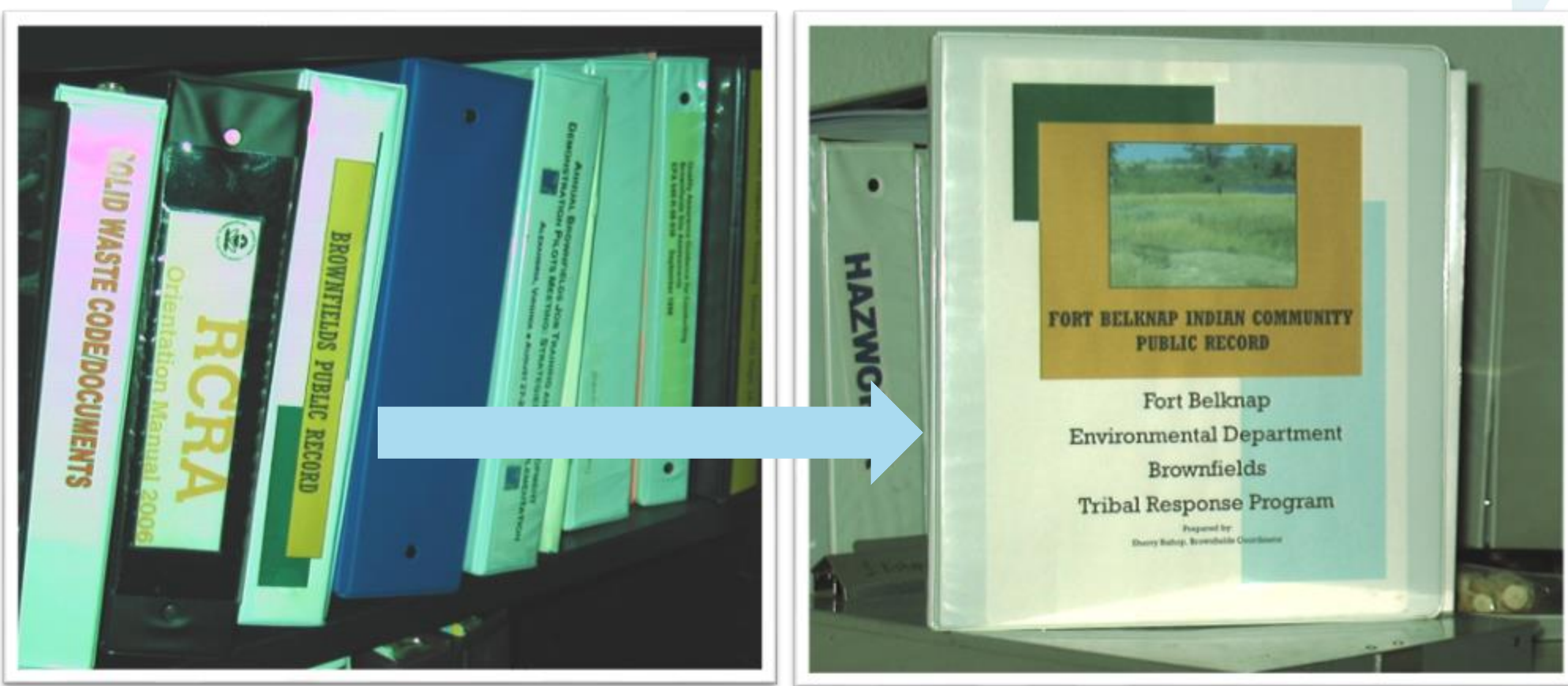


128(b)(1)(C) PUBLIC RECORD: and

- ❖ Identify in the public record whether the site, upon completion of the response action, **will be suitable for unrestricted use**. If not, the public record must identify the institutional controls relied on in the remedy and include relevant information concerning the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls; and how the responsible entity is implementing those activities.

Section 128(a) funds may be used to maintain and make available a public record systems that meets the requirements discussed above.





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 or social media page?

(When did you last check 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.
- ❖ Cleanups by other parties (federal, state or private)



How to Improve the P.R.?

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



A stylized graphic of a bridge with a series of triangular trusses, rendered in a light blue color, spanning the top of the slide.

**How do I enhance
“Institutional Controls”?**

The “Law”



*"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."*



Institutional Controls (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 are they needed?

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

- ❖ 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
- ❖ Specific controls in a Tribal Council
- ❖ Resolution
- ❖ Signs



What can happen without I.C.s?

Tribal housing built above a prior landfill resulting in the abandonment & demolition of the houses.





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

Video 4.1: Institutional Controls

Ray Reed

Turtle Mountain Band of Chippewas, ND

Grant 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 Institutional Controls

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 with past problems



Wind River Tribes, WY/DOE ICs

Former Uranium Mine Tailings Site - Completed and in place

- ❖ Warning signs installed around the oxbow lake
- ❖ A Tribal Ordinance restricting well installation and surface water impoundments within the institutional control boundary
- ❖ A notification of existing groundwater contamination to area drilling contractors
- ❖ Alerts and notifications provided by the State of Wyoming (DEQ and Engineer's Office) and/or BIA if an application for a well permit or gravel permit within the institutional control area is received
- ❖ An easement and covenant to restrict land use and well drilling on the former mill site property



Ute Mountain Ute Tribe, CO

Institutional Controls

The Tribe acquired a ranch with a house and a Tribal family moved into the house.

After investigating complaints about chemical odors in the area the US EPA Superfund Program removed 100's of drums of chemicals that were buried on the property.

After the “Removal Action” the Ute Tribe implemented “Institutional Controls” on the site.





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

Video 4.2: Institutional Controls

Scott Clow

Ute Mountain Ute Tribe, CO

Tribal I.C.s Process 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, county? & BIA?)
- ❖ Any other approvals or coordination needed?
- ❖ What monitoring or follow up may be needed?
- ❖ How will it be enforced?



Monitoring I.C.s?

Have arrangements been made 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?



Tribal Environmental Review?

Some Tribes are developing their own internal 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.



Other Agency Actions

- ❖ The Tribe conduct site I.C. monitoring for another agency (EPA, BIA, DoD or USACE)?
- ❖ Funding provided for such services?



128(a) Guidance

Consult the latest U.S. EPA 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 Link: [State and Tribal Response Program | US EPA](#)



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



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