




Tier 2 – Enhancing a Tribal Response Program

Module 3: Enhancing Other Mechanisms

What "Other Mechanisms" (as mentioned in Module 2) can be considered in enhancing your TRP program

TribalTAB.org

A stylized, light blue bridge truss structure arches across the top of the slide, set against a gradient background that transitions from light blue at the top to a darker teal at the bottom.

Element 1: Other Mechanisms

Element 1: Other Mechanisms

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



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 a state or federal agency.



Other Mechanisms

Such as?

- ❖ Other Tribal programs
- ❖ Other Federal or state agencies
- ❖ Other laws or authorities
- ❖ Other parties (private or business)
- ❖ Other means of persuasion



EPA Guidance



The Annual EPA 128(a) 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 (state or federal i.e., RCRA, CERCLA or USTs).



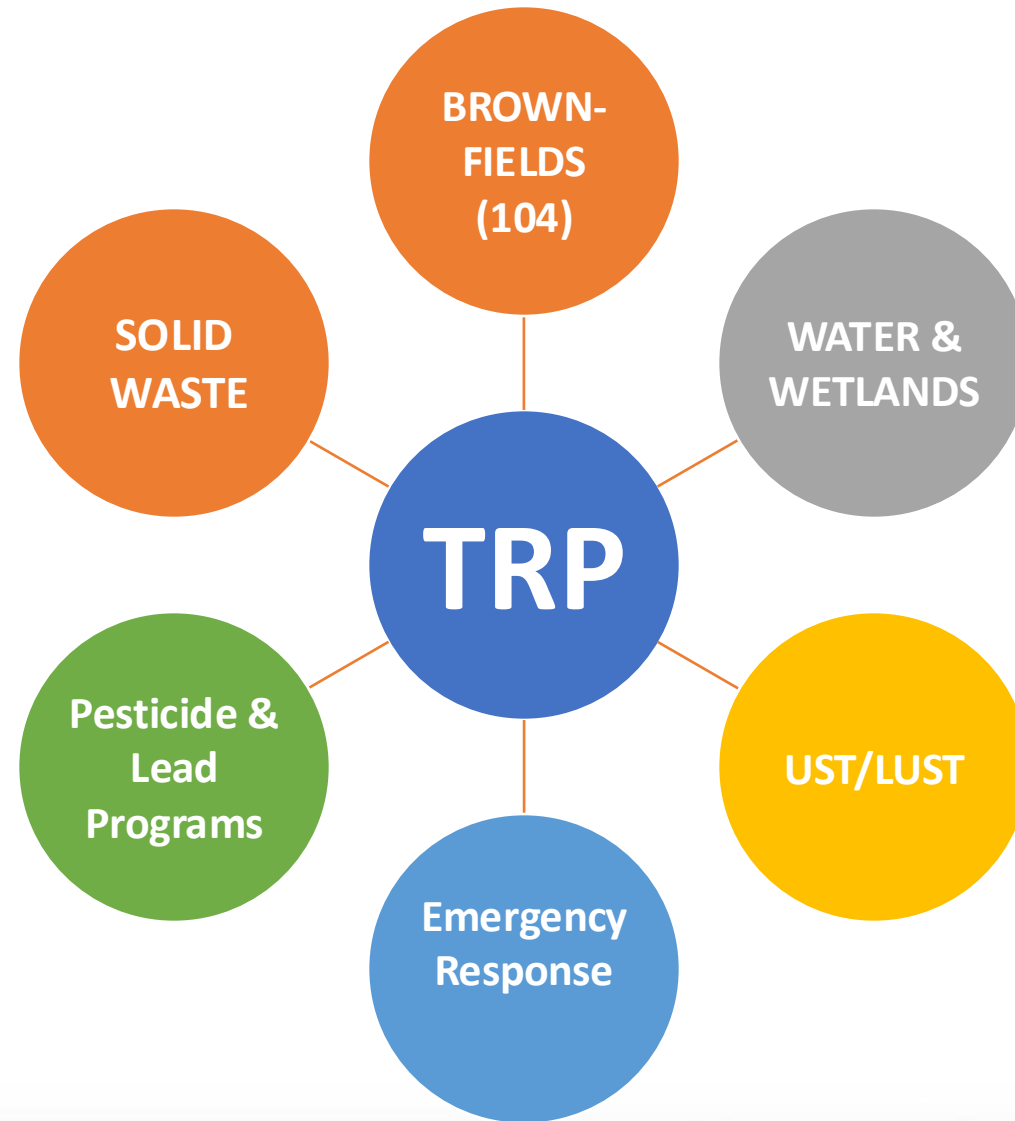
Coordination could include:

- ❖ 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).*

* These are Element 2 Activities



Related Environmental Tribal Programs



Other Tribal Programs



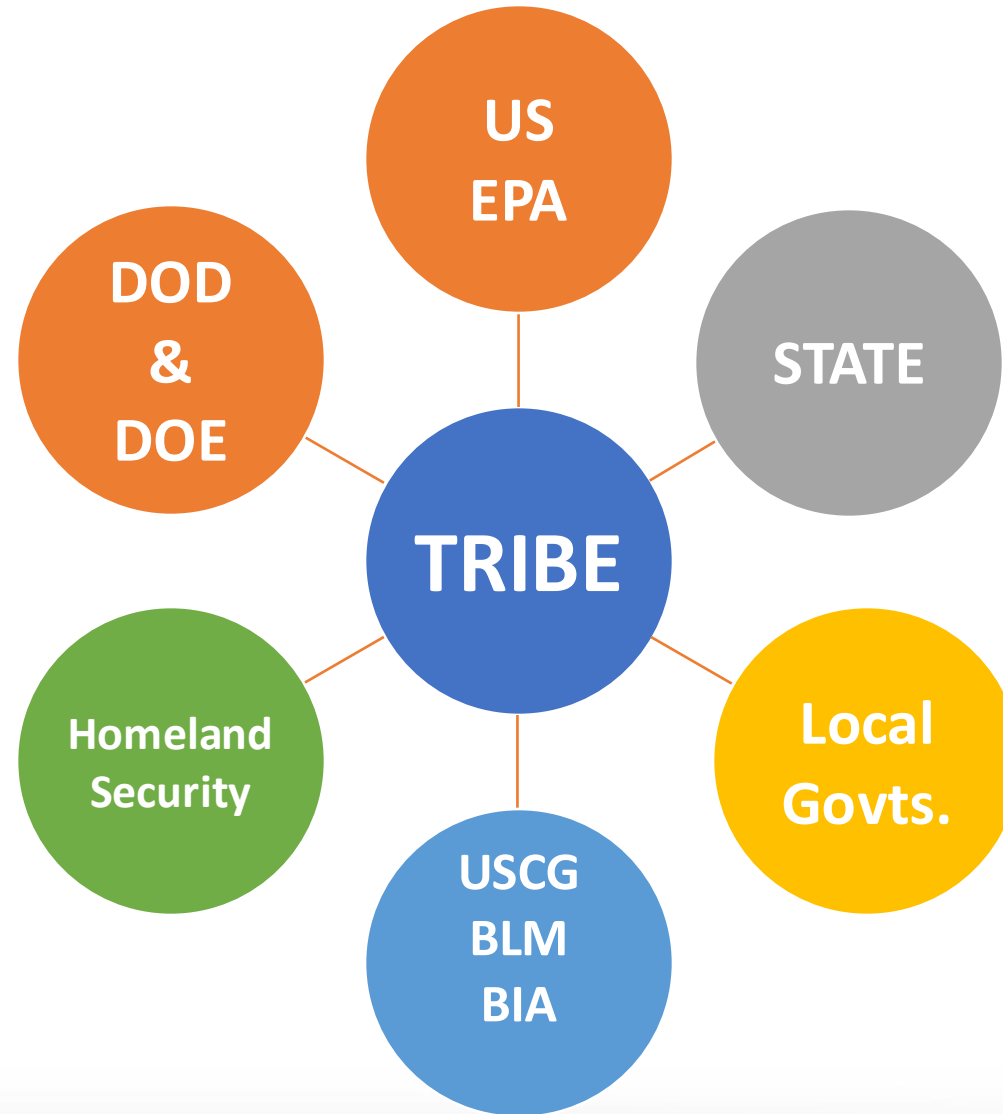


[Click to play video, which will open in YouTube.](#)

Video 3.1: TRP Collaboration

Stephanie Wallace
U.S. EPA Region 8 (retired)

Other Agencies (examples)





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

Video 3.2: Program Coordination

Blackfeet Nation, MT

**Look through your scope and outside
of your box**



“Other Mechanisms”

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

- ❖ Identify mutual goals or Interests?
- ❖ Coordination Meetings?
- ❖ Negotiate MOU/MOAs?
- ❖ Cross-Training on other programs?



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.





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

Video 3.3: Other Assistance

Lana Johnson

Oglala Sioux Tribe, SD

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 workplan 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.

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 mis-management of hazardous waste;
- ❖ The **RCRA Underground Storage Tank (UST) program** to include investigation and remediation of Leaking USTs (LUST);



U.S. EPA Programs

Continued:

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



Coordination of Petroleum Programs

Site-specific activities at petroleum brownfield sites

Tribes may use Section 128(a) funds for activities that establish or enhance response programs addressing petroleum brownfield sites.

The costs of site-specific assessment and cleanup activities at petroleum brownfield sites, as defined in CERCLA section 101(39)(D)(ii)(II), are both eligible and allowable (with some restrictions) if the activity is included in the work plan negotiated between the EPA regional office and the Tribe.

Also review resources on EPA's Brownfields Program website, such as "Community Visions for Abandoned Gas Stations": [1 New community-vision-gas-station-051022-508.pdf](https://www.epa.gov/brownfields/new-community-vision-gas-station-051022-508.pdf) (epa.gov)

Additional information about petroleum brownfields can be found on EPA's Office of Underground Storage Tank's ("OUST's") "Petroleum Brownfields webpage": [Petroleum Brownfields | US EPA](#)



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; and
- ❖ Status and content of any formal agreements or MOA/MOUs with federal or state agencies.



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 state programs have their own requirements to seek community comment and input on their decision making and activities. Tribes are also part of the community. Review their notification and comment requirements.



Assist Other Agencies?

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

Also, the TRP staff could assist Tribal members in understanding what is in the documents including translations if needed.



Combining Efforts

Combine TRP 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)
- ❖ State meetings or forums



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)**.

The TRP may be able to coordinate with those programs and/or participate in their advisory groups such “Restoration Advisory Boards” (RABs)



USACE

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](#).

This can also be a source of funding for Tribal programs



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 **Tribal Policy**, the DOE Environmental Management program maintains **cooperative agreements** with the Tribal nations to enhance their involvement in cleanup decisions while protecting relevant Tribal rights and resources.

SEE: [doe-american-indian-and-alaska-native-tribal-government-policy \(energy.gov\)](https://www.energy.gov/american-indian-and-alaska-native-tribal-government-policy)



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

Most states also have response programs that receive funding under CERCLA 128(a) and are required to meet the same requirements as the TRP.

Since contaminants do not usually respect treaty, political or property boundaries there is a lot of potential for mutual benefit by the coordination of the state and Tribal Response Programs and the sharing of information.

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



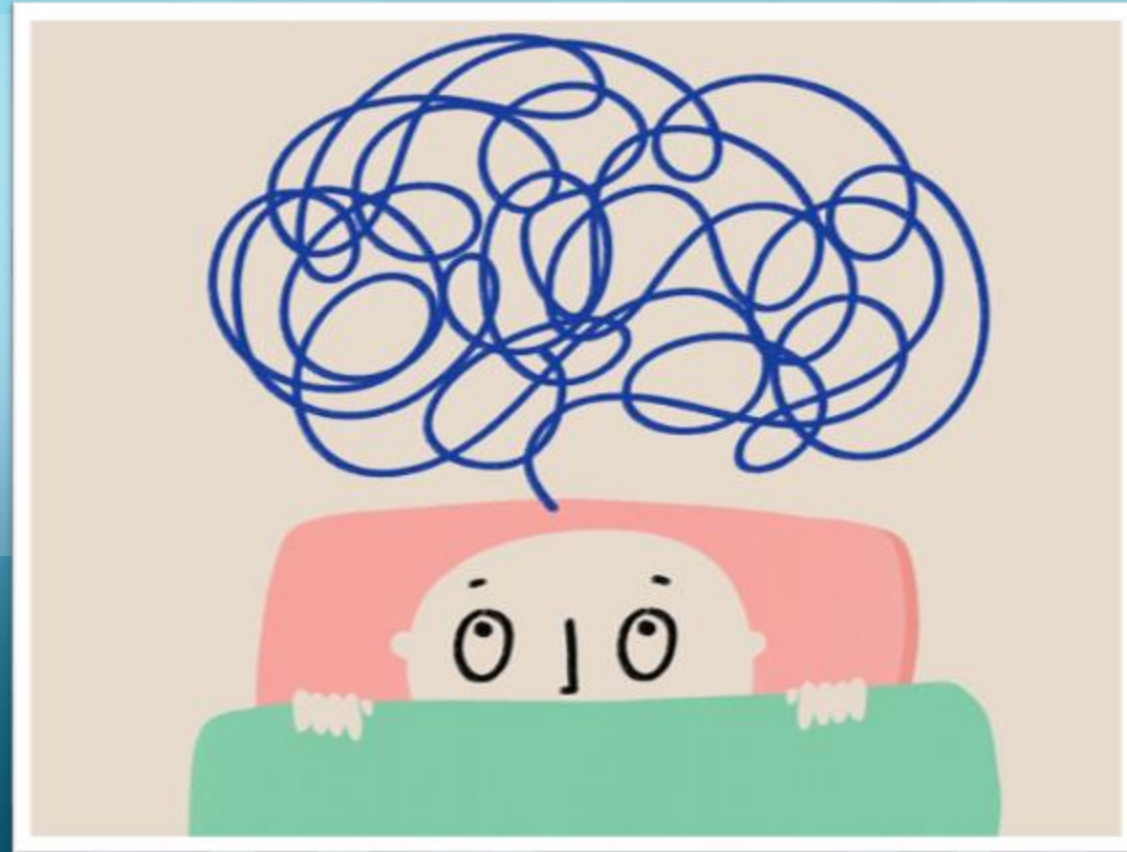
Local Government

The local city and county governments typically implement 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.



**What other resources are available to
“enhance” my TRP?**



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.**



Done the research?

Consulted with other Tribes to share experiences, legal research, implementation issues and funding sources?

Established coordination with BIA or other federal agencies to include how to address mutual problems and achieve common goals?



Free Learning Opportunities

Have you taken advantage of learning from others?

- ❖ Assisting U.S. EPA staff in planning and conducting cleanups under RCRA, CERCLA and LUST.
- ❖ Review and comment on cleanup plans developed by other federal and state agencies. (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, 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. (Consult the US EPA for such other funding sources – ANNUALLY!)
- ❖ 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 each year for such things as:

- ❖ Brownfield 104 Assessment & Cleanup
- ❖ Open Dump cleanups
- ❖ Community hazardous waste collection events
- ❖ School hazardous waste inventory and removals
- ❖ Emergency Response capacity building

{consult your EPA project mgr., the Annual 128(a) Program Guidance or [grants.gov](https://www.epa.gov/grants) 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.

SEE: [Funding Opportunities | The Administration for Children and Families \(hhs.gov\)](https://www.hhs.gov/indianaffairs/funding-opportunities)

{consult the ANA or [grants.gov](https://www.grants.gov) for more details}



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 Encountered

- ❖ Some states do not encourage their programs or staff to openly cooperate or coordinate with the Tribes.
- ❖ 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, state, counties 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.
- ❖ Seek Improvements in BIA land lease language and terms and enforcement of such terms.
- ❖ Clarify process of implementing Institutional Controls by Tribal government and in coordination with BIA and other government entities.



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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