

Overview of the Four Elements & Public Record

CERCLA Section 128(a)



CERCLA Section 128(a) ([42 U.S.C. 9628\(a\)](#))

Authorizes a noncompetitive \$50 million grant program to establish and enhance state and tribal response programs.

All activities must establish or enhance the administrative and legal structure of the response program

The Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law, P.L. 107-118) amends CERCLA.

The Brownfields Law defines brownfields sites and authorizes funding for assessment and cleanup of brownfields properties and state and tribal response programs.

- The Brownfields Law limits the liability of certain contiguous property owners and prospective purchasers of brownfields properties and clarifies all appropriate inquiry (AAI) for innocent landowners to encourage revitalization and reuse of brownfields sites.

Eligible Entities

- A State, as defined in CERCLA § 101(27)
- An Indian Tribe, as defined in CERCLA § 101(36)
- Intertribal consortia, as defined in the Federal Register Notice at 67 FR 67181, Nov. 4, 2002.

The Four Elements

Section 128(a)(2)



Timely survey and inventory of Brownfield sites



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



Mechanisms and resources to provide meaningful opportunities for public involvement



Mechanisms for approval of a cleanup plan

Section 128(a) strengthens EPA's partnerships with states and Tribes and recognizes their Response Programs' critical role in overseeing cleanups

State and Tribal Response Programs Oversee Brownfields Assessment and Cleanups

Depth and Breadth of the programs vary: CERCLA, RCRA, UST/LUST

Congress recognized the value of Response Programs in cleaning up and reusing Brownfield sites

Element 1 – Timely survey and inventory of brownfield sites

Identify properties with real or perceived environmental issues.

EPA provides the guidance, but it is the community that identifies a property as a *Brownfield*

EPA does not “approve” sites added to the inventory

Introductory Questions

- Does your program have a Brownfield Inventory?
- If so, what type of Sites are in your Inventory?
- What are your Tribal Priorities?
- Is your Inventory Publicly available?
- Problems or Issues Developing your Inventory?



Definition of Brownfield

A brownfield is a 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



Element 1 –
Timely survey
and inventory
of brownfield
sites

Benefits of Site Inventory

- Meets statutory requirement
- Dynamic list and easily updatable
- Tool for informing decisionmakers about the program's work
- Can prioritize sites based on community/Tribal Gov needs and planning priorities, including:
 - Short term and long term economic or social development
 - Local quality of life
 - Cultural space and resources

Create a list of sites where contamination issues are a concern.

- Abandoned properties, houses, mobile homes, gas stations
- Active but Underutilized properties
- Active but Underutilized Real State turnover complicated by real or perceived contamination
- Property use Blighted –significantly conflicts with a master plan or Tribal Planning

Additional examples that Tribes would like to share?



Developing Your List...

- Identify Suspected Areas (Former Industrial, former Dry Cleaners , Old Gas Stations)
- Tribal Priorities
- Consider properties tied to other projects (Transportation, Disaster Recovery, Neighborhood Stabilization, Adjacent Communities)
- Consider Tax Delinquent properties ??
- Consider former School properties, Hospitals, properties that are gateways to the Community

Potential Sources for Inventory

- Existing State/Tribal /Federal inventories/reports/databases:
 - UST/LUST inventories, open dump surveys, abandoned mine inventory
- Interviews with former workers/staff, residents, seniors, etc.
- Reports from community members (oral, web site, report form)
- Maps (insurance, topo, soil surveys), GIS, old photos, etc.
- Field survey of tribal, private, or state lands

ELEMENT 1 – SURVEY & INVENTORY: USING GIS TO ENHANCE ELEMENT 1

LRBOI Brownfields Program has been logging detailed GIS, Brownfield Survey, & Open Dump inventory data, from all field surveys in 2020 and 2021

Details include Lat/Long, perimeter, area, and volume (if applicable) of each Open Dump, and each Brownfield REC (Recognized Environmental Condition), found on Tribal properties

Other parameters using ArcGIS/ArcMap include Brownfield parcel centroid coordinates, & metrics from the IHS Solid Waste Survey Form:

- distance from nearby homes,
- distance from nearby water sources and ground wells,
- Hazard factors,
- Annual rainfall,
- Soil type and drainage, and more

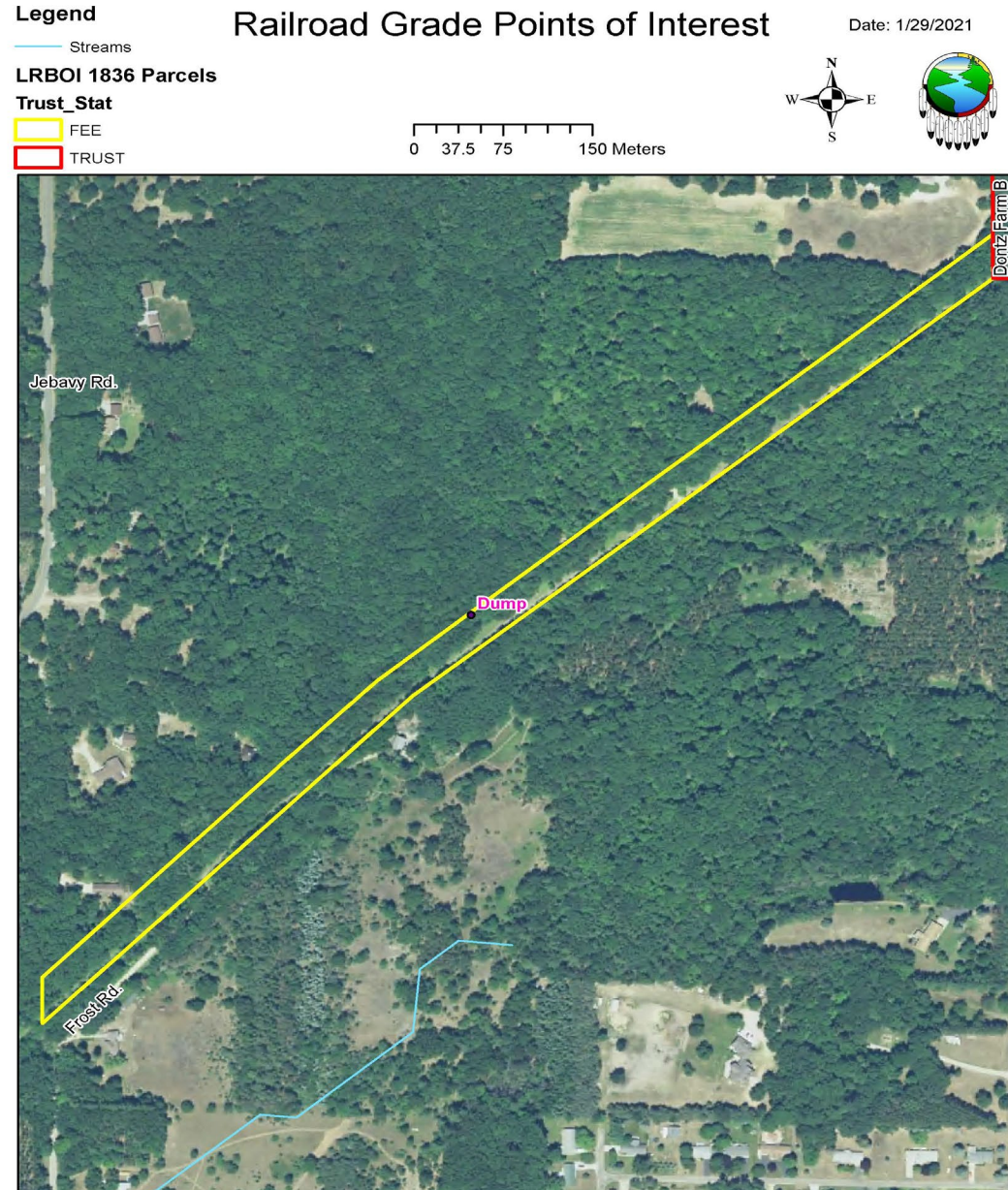
All GPS field data are loaded into ArcGIS/ArcMap, and also rendered into Shapefiles and Metadata

The screenshot displays the ArcMap interface with a map of a field. A yellow line runs diagonally across the field, with several red points marked along it. A data table window is open, showing the following data:

FID	Shape *	Id	Name	Descript	Type	Comment	Symbol	DateTime S	Elevation	Latitude	Longitude
0	Point ZM	0	193		WPT		Flag, Blue	2020-06-09T13:19:04Z	187.315475	44.277	-86.283535
1	Point ZM	0	194		WPT	Keep out sign	Flag, Blue	2020-06-09T13:31:00Z	193.899185	44.279202	-86.281015
2	Point ZM	0	195		WPT	Dump 50' east down steep grade	Flag, Blue	2020-06-09T13:39:02Z	195.87851	44.280371	-86.278924
3	Point ZM	0	196		WPT	Private sign	Flag, Blue	2020-06-09T13:42:33Z	199.26976	44.28063	-86.278501
4	Point ZM	0	197		WPT	Bbeer can and bag	Flag, Blue	2020-06-09T13:52:44Z	204.298187	44.281821	-86.276465
5	Point ZM	0	198		WPT	End of prop	Flag, Blue	2020-06-09T13:59:11Z	207.217087	44.283041	-86.274457
6	Point ZM	0	199		WPT	Dump 1	Flag, Blue	2020-06-09T14:19:05Z	199.059402	44.280621	-86.279092
7	Point ZM	0	200		WPT	D1	Flag, Blue	2020-06-09T14:19:58Z	199.030853	44.280515	-86.279174
8	Point ZM	0	201		WPT	D1	Flag, Blue	2020-06-09T14:20:20Z	199.15715	44.280533	-86.279129
9	Point ZM	0	202		WPT	D1	Flag, Blue	2020-06-09T14:22:26Z	199.556793	44.280439	-86.279153
10	Point ZM	0	203		WPT	D1	Flag, Blue	2020-06-09T14:23:07Z	199.782227	44.280465	-86.278995
11	Point ZM	0	204		WPT	D1	Flag, Blue	2020-06-09T14:23:42Z	199.889771	44.280429	-86.279128
12	Point ZM	0	205		WPT	D1	Flag, Blue	2020-06-09T14:24:25Z	200.789413	44.280462	-86.279216
13	Point ZM	0	206		WPT	D1	Flag, Blue	2020-06-09T14:25:07Z	200.89447	44.280496	-86.279256
14	Point ZM	0	207		WPT	D1	Flag, Blue	2020-06-09T14:25:55Z	200.958389	44.280501	-86.279211
15	Point ZM	0	208		WPT	D1	Flag, Blue	2020-06-09T14:26:53Z	201.11705	44.280526	-86.279155
16	Point ZM	0	209		WPT	D1	Flag, Blue	2020-06-09T14:28:26Z	205.764572	44.280476	-86.279229
17	Point ZM	0	210		WPT	D1	Flag, Blue	2020-06-09T14:29:55Z	204.505493	44.280544	-86.279327
18	Point ZM	0	211		WPT	Stack of firewood	Flag, Blue	2020-06-09T14:39:14Z	204.774872	44.279293	-86.280905
19	Point ZM	0	212		WPT	Prop marker	Flag, Blue	2020-06-09T14:40:45Z	202.639832	44.279233	-86.281007
20	Point ZM	0	213		WPT	Dump 2	Flag, Blue	2020-06-09T14:51:53Z	190.732376	44.277275	-86.283238
21	Point ZM	0	214		WPT	D2	Flag, Blue	2020-06-09T14:53:46Z	190.284317	44.277297	-86.2833
22	Point ZM	0	215		WPT	D2	Flag, Blue	2020-06-09T14:54:38Z	190.0616	44.277214	-86.283354
23	Point ZM	0	216		WPT	D2	Flag, Blue	2020-06-09T14:55:38Z	189.823029	44.277175	-86.283222
24	Point ZM	0	217		WPT	D2	Flag, Blue	2020-06-09T14:56:33Z	189.564774	44.277174	-86.28327
25	Point ZM	0	218		WPT	D2	Flag, Blue	2020-06-09T14:57:17Z	189.349899	44.277135	-86.283337
26	Point ZM	0	219		WPT	D2	Flag, Blue	2020-06-09T14:57:39Z	189.249496	44.277101	-86.283193
27	Point ZM	0	220		WPT	D2	Flag, Blue	2020-06-09T14:58:11Z	189.116547	44.277145	-86.283267
28	Point ZM	0	221		WPT	D2	Flag, Blue	2020-06-09T14:59:06Z	187.640137	44.277213	-86.283354
29	Point ZM	0	222		WPT	D2	Flag, Blue	2020-06-09T14:59:47Z	187.391006	44.27715	-86.283421
30	Point ZM	0	223		WPT	D2	Flag, Blue	2020-06-09T15:00:19Z	188.296951	44.277082	-86.283456
31	Point ZM	0	224		WPT	D2	Flag, Blue	2020-06-09T15:01:04Z	188.045181	44.277086	-86.283368
32	Point ZM	0	225		WPT	D2 potatoes	Flag, Blue	2020-06-09T15:02:17Z	189.145645	44.276996	-86.283377
33	Point ZM	0	226		WPT	D2	Flag, Blue	2020-06-09T15:03:24Z	186.657669	44.277061	-86.283462
34	Point ZM	0	227		WPT	D2	Flag, Blue	2020-06-09T15:04:25Z	188.9207	44.277031	-86.283565
35	Point ZM	0	228		WPT	D2 rr tie	Flag, Blue	2020-06-09T15:05:38Z	187.236984	44.277108	-86.283603
36	Point ZM	0	229		WPT	D2	Flag, Blue	2020-06-09T15:07:18Z	186.927399	44.277049	-86.283451

We also use the GIS data to eventually make POI (Points of Interest) Maps in ArcMap for each parcel surveyed, for intra-governmental use.

This also provides a nice visual of how far away any contamination is from homes, roads, rivers, and more.



Using GIS data, Solid Waste Survey data, & Brownfields Survey & Inventory data, we create Brownfields Metadata, and a final IHS Health Threat Score, per parcel AND per year.

Parcel	Parcel ID #	Parcel Acreage	Site ID	County	Latitude Centroid	Longitude Centroid	Date of Survey	Staff on Survey	Land Status	RECs
Railroad Grade	07-129-001-01	8.30	RRG	Manistee	44.280562	-86.279	6/19/2020	BK; AS	Fee	Prior Railroad ROW; RR materials; buried open dumping

Keeping annual data also permits future longitudinal comparisons!

Parcel Name	Parcel ID	Date of Survey	Parcel Acreage	Total Dumps Found	Smallest Surface Area (acres)	Largest Surface Area (acres)	Average Surface Area size (acres)	Average Surface Area size (yd sq)	Average perimeter (ft)	Average central distance from surface water source (ft)	Average central distance from nearest home (ft)	Total Unique Factors found in dumps	Avg Factors per dump	Total acreage of dumps	Dumps as % of parcel (acres/acres)	Avg Final IHS Health Threat score
Railroad Grade	07-129-001-01	6/19/2020	8.30	1	0.1097	0.11	0.110	458.38	233.6	978.9	423.0	4	4.00	0.11	1.32%	24.13
Dontz A	07-121-015-00	6/25/2020	195.60	3	0.0003	0.02	0.006	23.44	66.0	687.7	853.3	4	2.00	0.02	0.01%	0.65
Orchard Warehouse/Area 51	07-121-010-00	6/30/2020	8.22	15	0.0002	0.11	0.042	174.93	221.7	1837.8	1846.9	7	3.47	0.63	7.64%	5.75
Indian Village I	03-025-010-00	7/8/2020	35.82	1	0.0598	0.06	0.060	249.96	373.5	1562.3	305.3	3	3.00	0.06	0.17%	10.17
Indian Village II	03-025-016-00	7/8/2020	4.01	2	0.0012	0.01	0.008	31.71	126.5	927.8	1157.2	6	3.00	0.02	0.38%	1.24
Orchard Gaming	07-128-001-00	7/30/2020	160.16	31	0.0005	1.63	0.082	340.79	233.3	624.5	1735.4	10	2.39	2.53	1.58%	17.39
Old Stronach	14-121-038-00	8/6/2020	0.43	0	0	0	0	0	0	0	0	0	0	0	0.00%	0
Annual means	N/A	N/A	58.94	7.57	0.0245	0.28	0.044	182.74	179.2	945.6	903.0	4.86	2.55	0.48	1.58%	8.48

Questions?

Element 2

Oversight and enforcement authorities or other resources that ensure response actions protect human health and the environment, are conducted in accordance with applicable laws, and are completed

Discussion Questions for Element #2

What Type of SOPs do you have in Place?

Issues in Developing Rules, Regs or SOPs ?

How often do you update or develop new SOPs?

Element 2 –
Oversight and enforcement
authorities or other
resources that ensure
response actions
protect human health
and the environment,
are conducted in
accordance with
applicable laws, and
are completed

Rules, Regulations and Ordinances

SOPs

Administrative Procedures

After Response action is completed,
Operation & Maintenance and/or Long-
term monitoring activities; ICs



Tribal Perspective
How or what they have
Done under Element #2

Element 3 – Mechanisms and resources to provide meaningful public participation

Access to the
information being
used to make
decisions

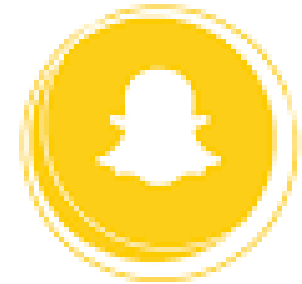
Prior
notice, and adequate
time to provide input
at each step of a
project, including:

Creates a process to
inform the response
program of
environmental issues
(real or perceived)
that may need to be
addressed

- Site prioritization
- Cleanup plans
- Site activities

Element 3 – Mechanisms and resources to provide meaningful public participation

- *Examples?*
- *Additional examples that Tribes would like to share?*
- *What type of activities/mechanism did you have to implement during COVID that you will keep for future?*



Element 4 – Mechanisms for approval of a cleanup plan and verification and certification that response is complete

Response programs need to have mechanisms in place to:

- Develop a process to approve a cleanup plan
- Build the capacity to verify that an assessment or cleanup was done properly
- Allow the response program to document and certify that a response action is completed
 - All relevant cleanup activity information must be placed in the Public Record

Element 4 – Mechanisms for approval of a cleanup plan and verification and certification that response is complete

Examples.

- Adopt soil cleanup standards.
- Adopt maximum contamination level drinking water standards.
- Establish a process through which cleanup plans are approved before a proposed cleanup or response action takes place.
- Develop procedures to verify adequacy of assessment or cleanup
- Adopt procedures to issue Certification of Completion of response action
- *Additional examples that Tribes would like to share?*

Public Record

To receive funding, each recipient must establish, and annually maintain, a public record

- This is different from the inventory in Element 1!
- Include in the record:
 - Sites at which response actions have been completed in the previous year
 - Sites that are planned to be addressed in the upcoming year
- Identify sites ready for unrestricted use, or:
 - Identify the Institutional Controls (ICs) relied on in the remedy
 - Who is responsible for oversight, monitoring, and/or maintenance of the ICs and engineering controls?
 - How the responsible entity is implementing those ICs

Public Record

EPA encourages state and tribal response programs to place their Public Record on the internet

128(a) funds can be used to make Public Record available to the public via the internet or other avenues

The development and operation of systems that ensure long-term maintenance of the public record can be included in work plans



Open Discussion & Questions