

## Introduction and Overview

# Tribal Response Program Training Project

## CERCLA 128(a) Tribal Response Programs

### Background:

In January of 2002 Congress passed Public Law 107-118 the Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA, hereafter referred to as the “Brownfield Law”). In this Law Congress included, “SECTION 128. STATE RESPONSE PROGRAMS”, an amendment to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA aka Superfund). A response program is intended to address releases of hazardous substances, pollutants and contaminants, to include releases of petroleum and controlled substances at brownfields and other sites. Such releases may be past, present and future, and may include mine scarred lands.

In Section 128(a)(1) it states that the Administrator (of EPA) may award a grant to a state or Indian tribe that has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements (described in 128(a)(2); and in general, a state or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe. Section 128(a) (2) goes on to explain what the four elements of a response program shall be along with the requirement for a Public Record.

In December 2007 the Midwest Assistance Program (MAP), in coordination with the Alaska office of the Rural Community Assistance Corporation (RCAC), received a grant from the U.S. EPA HQ to develop 128(a) Tribal Response Program training. This would include maximizing the use of tribal staff to provide training for tribes on the 128(a) Tribal Response Program. This has been done via video interviews of tribal TRP staff that have been incorporated into a 30 minute video about the TRP and inclusion of video clips into the Power Point Training materials. Although Section 128(a) refers to state and tribal response programs this training shall focus on the Tribal portion or the “Tribal Response Programs”.

The purpose of this training is to provide information and support for tribes seeking to “take reasonable steps” to “establish or enhance” a Tribal Response Program (TRP) utilizing a 128(a) grant from the U.S. EPA. The training material is in two tiers:

- Tier I: Establishing a Tribal Response Program
- Tier II: Enhancing a Tribal Response Program

Tier I shall cover the basic Elements of the TRP and the steps to establishing a TRP. Tier II is intended for those tribes that have established the TRP and are ready to go beyond the basic Elements of the TRP to enhance the program to meet their specific tribal needs and priorities.

This training has been developed considering the information obtained from tribes in a “Needs Assessment” conducted for this project and ongoing input from tribes at workshops, conferences and site visits. These tribes initially included 9 “Pilot Tribes” that agreed at the time of the grant proposal to provide input into the development of the training. Since then other tribes have also provided input into the training. The Needs Assessment focused on Tribal Response Programs and provided guidance for the development of the training materials that is intended to train tribal environmental managers and staff on how to effectively establish or

enhance, develop, manage, and administer a Tribal Response Program. Also, it is a goal of this project to utilize the knowledge, experience and ability of tribal environmental managers and staff to share their experiences and mentor and train tribal environmental staff in their respective programs/communities and train/mentor other tribal staffs. Parallel training shall be provided to Alaska tribal and village staff to address the unique issues and requirements of that region.

### Concept:

The TRP training shall focus on development of training for the core topics necessary to establish and/or enhance the Tribal Response Programs (TRP). The core topics include:

#### TIER I:

- Purpose and scope of the 128(a) Tribal Response Program;
- The development and implementation of the 4 Elements;
- The Public Record to include Institutional Controls;
- How to Establish a TRP
- Introduction to Site Specific Work

#### TIER II:

- Reviewing and Enhancing a TRP
- The use of “Other Mechanisms”
- Application for and management of EPA 128(a) Grants;
- Emergency Response.
- Contract procurement and management for TRP activities; and
- Advanced 128(a) Site Specific Activities

The TRP training project will coordinate with other parties that will be developing relevant training on specific topics that may be necessary to establish and/or enhance a TRP such as the Institute for Tribal Environmental Professionals (ITEP) at Northern Arizona University (NAU), the Technical Assistance to Brownfields (TAB) grantees, the EPA National Enforcement Training Institute (NETI), other US EPA Training and others.

This “TRP Core Training” should provide the basic framework that a tribe can use to establish and enhance their Tribal Response Program. Tribes should also seek and obtain additional training on specific topics that best meets their needs and priorities as they establish and enhance and implement their program(s).

#### Training format:

A 30 minute video provides an overview of the Tribal Response Program. The training materials will be presented in modules with basic information and guidance applicable to each topic. The Modules shall be designed so that they may be utilized separately or in sequence as needed. Each Module shall include a written summary along with power point materials. An appendix shall include example and model documents or references materials. A set of case studies of TRP activities conducted by tribes shall be included to illustrate specific applications of the program, problems that have been encountered and lessons learned. The materials can be used for self instruction or class room instruction.

#### General Format of Modules:

- I. Topic
  - The Law
  - U.S. EPA Guidance
  - General Discussion
- II. Tribal Implementation
  - ❖ Tribal Accomplishments

- Tribal Issues
- ✓ Lessons Learned
- Further Tribal Implementation

### III. Additional Guidance and Resources

#### **Basic References:**

1) 107<sup>th</sup> Congress 1<sup>st</sup> Session Senate Report 107-2, Calendar No. 19, Brownfields Revitalization and Environmental Restoration Act of 2001.

2) 107<sup>th</sup> Congress 1<sup>st</sup> session, H.R. 2869, An ACT.

3) Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118) (aka the Brownfields Law)

4) Federal Register Vol. 67, No. 227/Monday, November 25, 2002/Notices pp.70594-70598.

5) Annual EPA HQ 128(a) State and Tribal Response Program Guidance: *Funding Guidance for State and Tribal Response Programs*. (Note: this may be supplemented by Regional guidance)