



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM



TAB

TECHNICAL ASSISTANCE TO BROWNFIELDS

KANSAS STATE  
UNIVERSITY

*CERCLA 128(a):  
Tribal Response Program  
(TRP)*

*Element 2: Oversight  
& Enforcement*

*Tier 1: Module 4*



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM



TAB

TECHNICAL ASSISTANCE TO BROWNFIELDS

KANSAS STATE  
UNIVERSITY

# Tribal TAB Program

*Providing “Technical Assistance  
to Brownfields” to all U.S.  
Federally Recognized Tribes!*

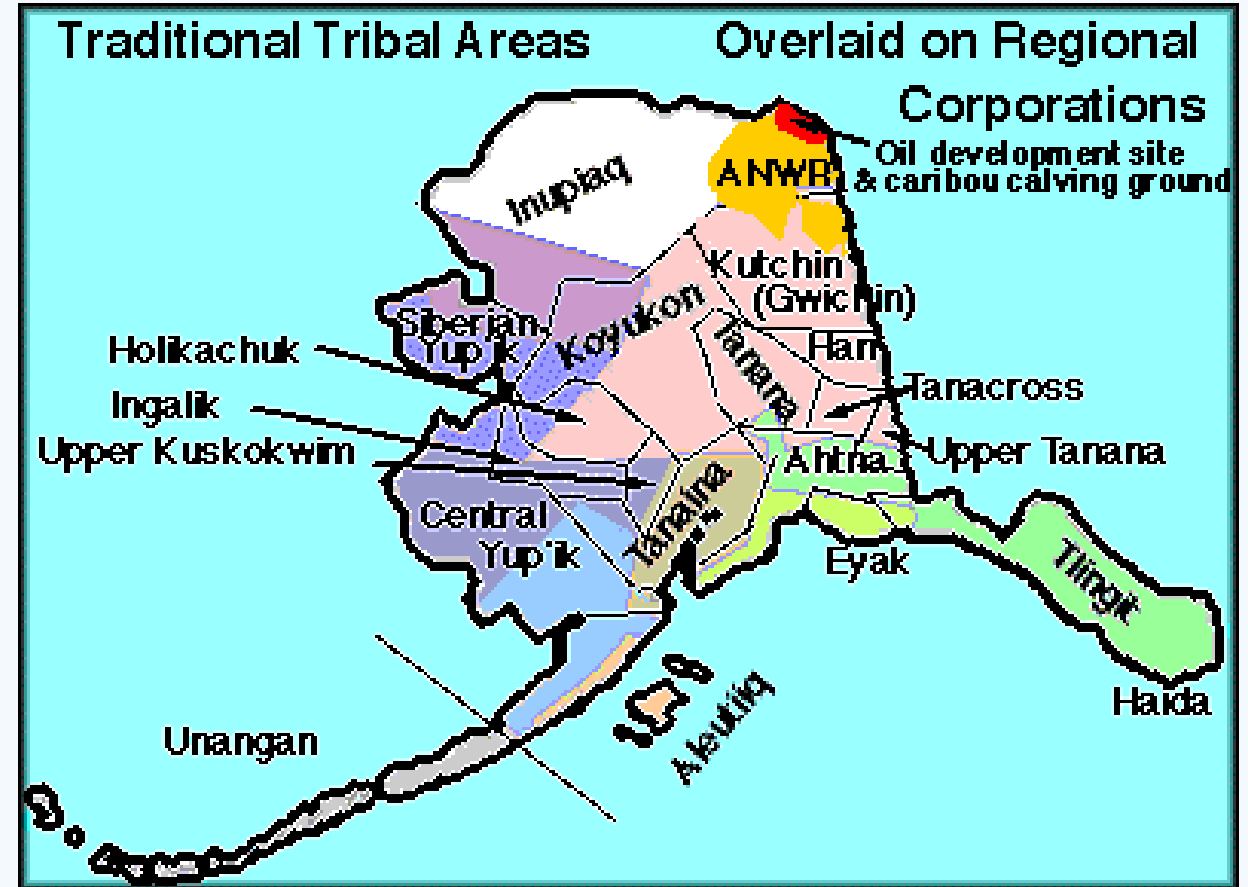


# Tribal TAB in Alaska

In Partnership with:  
the Division of  
Community Health  
Services | Alaska  
Native Tribal Health  
Consortium  
(ANTHC)



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM





## *ANTHC TRP Role:*

- *Leading development of online Tribal Brownfields Forum*
  - *Forum using similar framework to LEO Network*
- *Act as ongoing technical assistance hub for Alaska tribes*

# TRP Element 2

Indian tribes must include, or be taking reasonable steps to include, in their response programs oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

- 1) a response action will protect human health and the environment and be conducted in accordance with applicable federal and tribal law;

and

## Element 2

2) The State or Tribe will *complete the necessary response activities* if the person conducting the response fails to complete them. (this includes operation and maintenance and/or long-term monitoring activities.)





## Tribal Response Program Role

Therefore: This Element has two parts:

- 1) Development of oversight and enforcement authorities or other mechanisms and resources; and
- 2) Ensuring that response actions or cleanups conducted under this program are adequate and completed.\*

\*Note: This is similar to Element 4



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM



TAB

TECHNICAL ASSISTANCE TO BROWNFIELDS

KANSAS STATE  
UNIVERSITY

# *Development of Oversight and Enforcement Authorities*

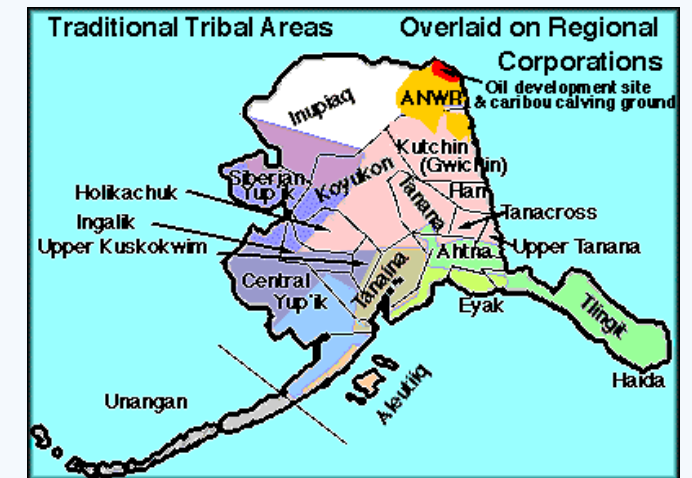
## *Element 2: Part 1*



# Alaskan Tribal Jurisdiction

Who has what jurisdiction and authority for formal approvals of Cleanup Plans and Cleanup Standards at specific sites in Alaska is subject to state and federal laws and the most recent court decisions.

However, a Native Tribe may always review documents and provide comments.



## Tribal Response Enforcement

U.S. EPA: *Eligible grant activities include, but are not limited to, development of legislation, regulations, procedures, ordinances, guidance, etc. that would establish or enhance the administrative and legal structure of their response programs.*



## Element 2: Part 1

*Oversight & Enforcement Jurisdictions in Alaska affected by:  
(case-by-case)*

- The AK Native Claims Settlement Act (ANCSA)*
- Land/Building Transfers*
- Land Acquisitions*
- Surface vs sub-surface*
- Water issues*
- Federal, State, Borough property ownership*
- Etc.*





## *Element 2: Part 1*

*Reservation Tribes have similar Oversight & Enforcement and Jurisdictional problems as Tribes in Alaska even if they have much larger land areas.*



## Tribal Civil Enforcement

- To conduct oversight and ensure compliance Tribes may need to develop **civil** compliance and enforcement authorities, policies and procedures for their environmental programs.
- The necessary **authorities** can be created by updating and/or adoption of appropriate Tribal laws, codes and ordinances.



## Civil vs Criminal Law

- *Civil case law*, up to and including U.S. Supreme Court decisions and opinions, differ somewhat from those for criminal law.
- Constantly evolving area of law and tribal sovereignty.
- Some issues unique to Alaska

*(Your tribal legal counsel should be consulted for questions in this area.)*





# Jurisdiction vs Authority

Understand the difference between:

**Jurisdiction:** Established by Treaty and federal laws and legal precedents:

- ✓ Alaska Native Claims Settlement Act of 1971 (ANCSA);
- ✓ Indian Self-Determination and Education Assistance Act of 1975;
- ✓ “Indian Country” — a legal term for the land that the federal government holds in trust for Native Americans – “Alaska Exemption” status?;
- ✓ State of Alaska recognition of tribal sovereignty of lands not in “Federal Trust”?; etc.

and

**Authority:** Established by Tribal laws and Codes



## Tribal Laws & Codes

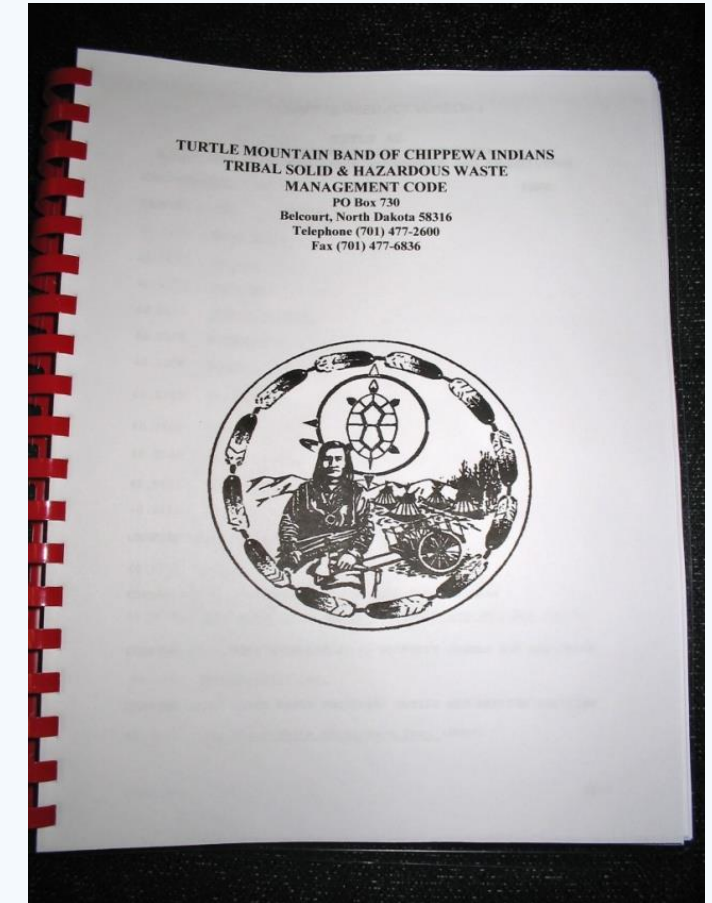
- Tribal laws, codes and ordinances along with procedures, policies and protocols can vary substantially from tribe-to-tribe
- there is *no one-fits-all model* law or code
- Federal and State laws/regs. can be a model for development of Tribal laws and codes/regulations but usually require some adaptation to Tribal applications.



## Tribal Laws & Codes

**Tribal Solid & Hazard Waste Laws/Codes**  
may include Tribal Response Program  
Requirements such as:

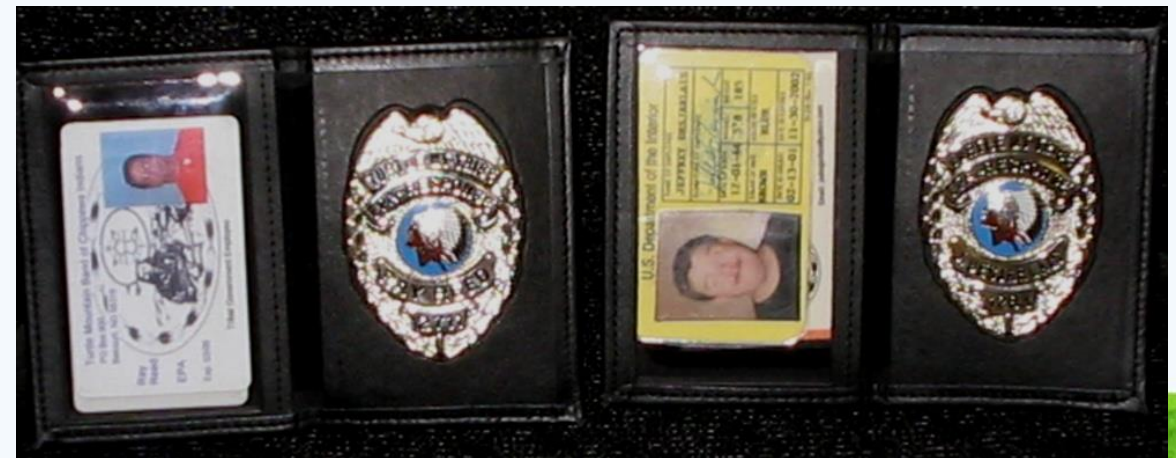
- ✓ Prohibition of dumping or illegal releases
- ✓ Responses to releases
- ✓ Oversight of responses
- ✓ Conducting responses
- ✓ Cleanup Approval & Standards
- ✓ Verification & Certification
- ✓ Institutional Controls
- ✓ Public Participation
- ✓ Tribal Permits & Fees





## *Tribal Compliance & Enforcement.*

*Tribal ID recommended for Tribal Staff Conducting  
Environmental Civil Compliance and Enforcement*





## Tribal-State-Federal Overlap

In some cases both Federal (i.e. U.S. EPA, COE or BLM) and/or AK-DEC and tribal laws and requirements may be applicable to a response action and both oversight authorities may be applicable.



# *EPA Laws & Regulations*

*Federal Laws and U.S. EPA regulations that govern response actions include:*

- *CERCLA (aka Superfund);*
- *RCRA Corrective Action & UST/LUST regulations;*
- *Asbestos Abatement under the Clean Air Act;*
- *TSCA for Lead Based Paint & PCB remediation and disposal;*
- *etc.*

*NOTE: Learn the acronyms – they are unavoidable!*





## *“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”*

- *Other Tribal Programs (Housing, Police, etc.)*
- *US EPA Superfund & RCRA Programs*
- *AK-DEC Laws & Programs*
- *Dept. of Defense Installation Restoration Program (IRP)*
- *Dept. of Defense Formerly Utilized Defense Sites (FUDS)*
- *Native American Lands Environmental Mitigation Program (NALEMP)*
- *US Army Corp of Engineers Programs*



## “NALEMP”

*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, including Alaska Native Claims Settlement Act (ANCSA)–conveyed 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.*





## Tribal Accomplishments

- Updating, drafting and adopting new or revised tribal laws and codes
- Conducted site specific cleanups utilizing tribal authority to implement and conduct a response action
- Developing internal procedures and policies (SOP) on how to implement the requirements
- Referrals to the BIA, U.S. EPA or a State for appropriate compliance and enforcement action.



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM



TAB  
TECHNICAL ASSISTANCE TO BROWNFIELDS

KANSAS STATE  
UNIVERSITY

*Ensuring that a Response Action  
is Adequate & Completed*

*Element 2: Part 2*



## 2 Parts of “Completion”

This part of Element 2 has 2 sub-parts:

- Ensuring necessary response actions are adequate to protect public health and the environment;  
and/or
- Ensuring that a response action is completed to include operation & maintenance or long-term monitoring activities

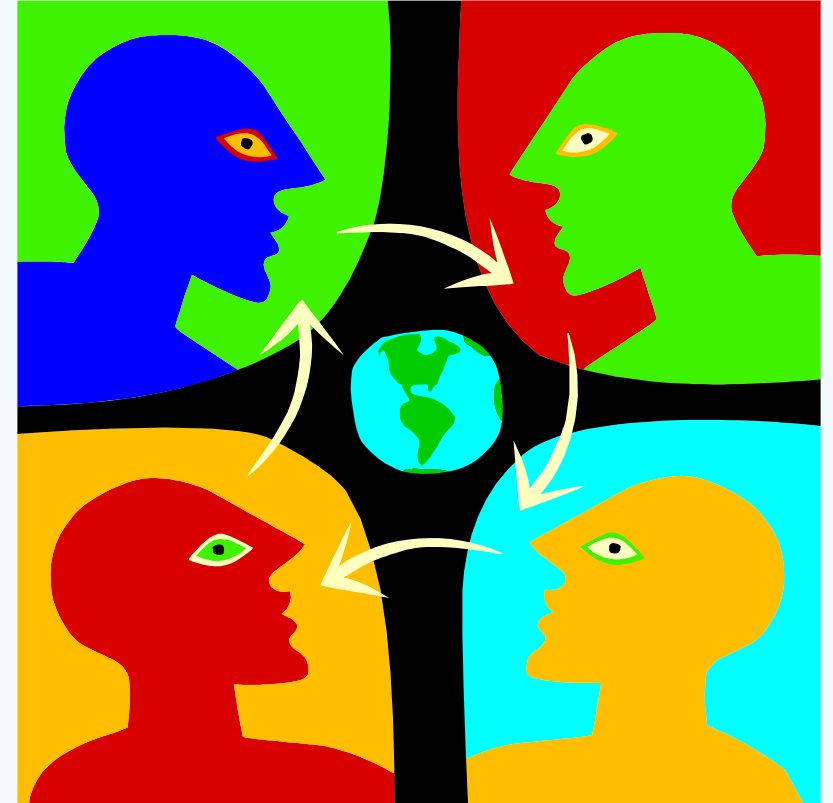




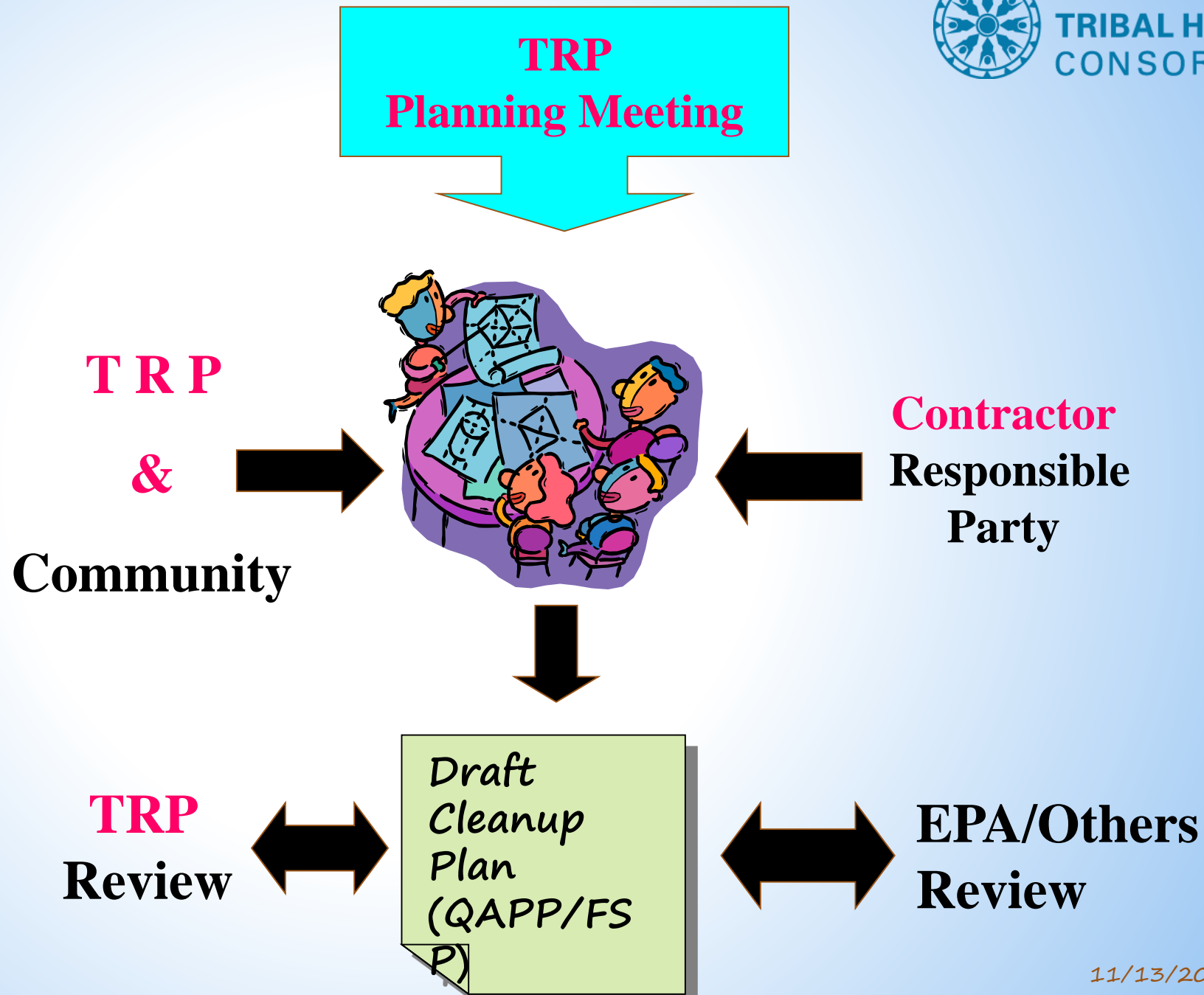
## Steps: Cleanup Oversight

### Cleanup Adequacy:

- What are site end use and cleanup goal(s)?
- Have all local/tribal exposures been addressed?
- “TEK” addressed?



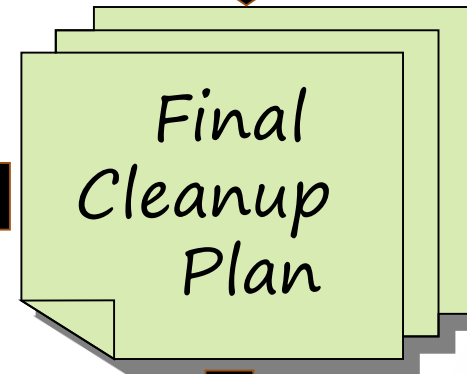
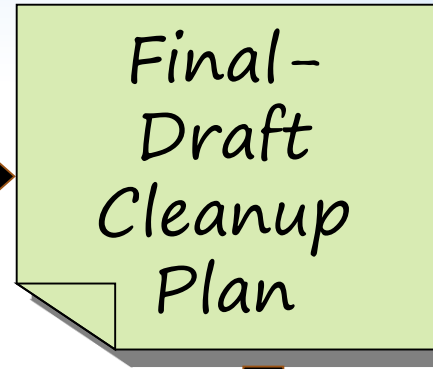
# Typical Clean up Planning Process



# Cleanup Planning Process



Public Meeting



Responsible Party  
Conducts Cleanup







## Tribal Cleanup Standards

- Under the TRP –The Tribes may establish the cleanup standards or goals for the cleanups conducted under their programs via tribal laws, codes or resolutions.
- A typical cleanup or response is conducted to meet site specific “risk based” goals or cleanup standard(s).
- Use the AK-DEC\* and EPA guidelines, experts and resources!

\*see 18 AAC 75, Article 3, updated June 17, 2015.



## Cleanup Standards

*Clean up standards can be established in two ways:*

- *Establishing a decision making process and designating who the decision maker is (i.e. Tribal Council, Tribal Chair, Environmental Director, etc.);*

*and/or*

- *Adopting specific cleanup standards for @ chemical or substance.*



## Cleanup Methods & Goals

Under federal programs (and funding) a *range of alternatives* is usually considered in the development of a response plan and then a decision is made, with community input, on the appropriate response to take, and the appropriate cleanup levels/goals to be obtained, *considering several factors* which can include:





## *Factors to be Considered:*

- *Protection of human health and the environment*
- *effectiveness*
- *“implementability”*
- *cost*
- *compliance with all applicable laws, regulations and codes*
- *long and short term effectiveness*
- *community acceptance*

*Other Tribal Criteria?*



## Cleanup Completion

The completion of a response action is dependent on the:

- required actions;
- planned time-frames\*; and
- cleanup standards & goals;

That are established in the cleanup plan.

*\*Note: “Stuff Happens!” – things do not always go as planned*



## Determining Completion

*Determining completion can be evaluated by visual observation in some cases but typically it will involve conducting confirmation or verification sampling and analysis to determine if the required cleanup levels and goals have been achieved.*





## Element 4: Overlap

*NOTE: This Element overlaps Element 4:  
verification and certification of cleanups.*

*The same administrative and legal authorities  
may need to be in place to conduct those  
actions.*



# Tribal Oversight Costs

## U.S. EPA:

- Costs incurred for oversight of cleanups at other than brownfield sites may be eligible and allowable costs under the 128(a) grant;

and

- These costs must be authorized under the tribe's grant work plan by EPA to be allowable.



## EPA Funds for Cleanups

- *Eligible 128(a) grant fundable activities include, but are not limited to, conducting limited site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements; and/or*
- *Other than Alaska Native Tribes, Grants are available under **Section 104(k)** for Assessment and Cleanup of specific brownfield sites. Native Tribes can partner with an eligible entity for such grants.*





## Tribal Funding

*Tribes are establishing emergency or environmental response funds for such situations and establishing some fees to provide the funds.*

*{e.g. a 1% of total construction contract for solid waste management permit fee}*



## Alaska Examples

- Utilizing the NALEMP to implement cleanup actions (Villages of Yakutat & Eyak).
- Conducting Site sampling to determine if cleanup completed (Village of Yakutat)
- DoD/Air Force contracting tribal staff to implement cleanup activities and conduct sampling (Port Heiden)



## Tribal Issues

- *Sites under jurisdiction of another Agency.*
- *Uncertainties of Tribal jurisdiction or authority to impose the TRP.*
- *Small Tribal land base but is directly impacted by a nearby site.*
- *Lack of existing Tribal authorities and/or rules or policies in place for environmental programs.*





## Tribal Accomplishments

- *Conducted site specific cleanups utilizing 128(a) or other funds/partners to gain experience*
- *Conducted oversight of Cleanups by “Responsible Parties”*
- *Observing & assisting federal or AK-DEC actions*
- *Reviews of contractor reports documenting results of a cleanup*



## Tribal Accomplishments

- Referrals to the U.S. EPA or AK-DEC for appropriate compliance and enforcement action.
- Working with DoD on Cleanups
- Drafting and developing tribal laws and codes to implement compliance authority and requirements



## Example: Tribal Oversight

The Yakutat Tlingit Tribe: The U.S. Army Corps of Engineers (USACE) has conducted cleanups at former military sites in Yakutat and is presently doing remedial investigations at others under the Formerly Used Defense Sites (FUDS) and the Native American Lands Environmental Mitigation Program (NALEMP). The Tribe is utilizing TRP funding to conduct its own investigations into dioxin contamination and to review the remediation work being done by the USACE in Yakutat.





## Tribal Lessons Learned

- It is important to determine and document *site ownership*, responsibility and jurisdiction;
- *Site Access Agreements* may be needed;
- Adopting and implementing tribal laws and codes to *establish the tribal authority* to conduct these actions is necessary;
- Need to have appropriate internal *policies & procedures & SOPs* in place;



## Lessons Learned

- *There is a significant need for more training, experience and real-time on-scene technical assistance in this area.*

*and*

- *Implementation of these actions can be costly and may not be an eligible use of TRP grant funds.*



## Tribal Issues

- Lack of *existing* Tribal civil compliance and enforcement authorities, policies and procedures in place for environmental programs.
- Federal officials *not aware* of tribal laws and requirements.
- The *tribal sovereignty* and civil case law is constantly evolving.





## Tribal Implementation

- Identify existing response sites where Tribal oversight is necessary and appropriate.
- Determine what tribal or other authorities exist or need to be improved or created to fully implement this Element and the TRP.
- Where Tribe does not have jurisdiction, determine tribal role(s) and means for input or oversight.



## Tribal Implementation

- Collaboration and sharing among tribes of case studies and situations;
- More opportunities for tribal staff to *learn in the field* and shadow or observe experienced EPA/State response staff and contractors.
- Tribes hiring Tribes to perform tasks



## Resources:

- ❖ Use the “*Brownfield Forum*” to seek answers to questions and advice of other tribes and/or KSU staff. The Tribal Brownfields Forum is an online platform for connecting brownfields and contaminated-sites staff and professionals from Tribal areas: [www.tribalbrownfields.org](http://www.tribalbrownfields.org)
- ❖ ANTHC & KSU TAB Assistance to Tribes: No application process, just contact us! [www.ksutab.org](http://www.ksutab.org)
- ❖ Annual EPA 128(a) Program Guidance





## *TAB Assistance to Alaska Tribes: Contacts*

❖ Joy Britt

ANTHC TRP Program Manager

[jdbritt@anthc.org](mailto:jdbritt@anthc.org) or (907) 729-5630

❖ Bailey Richards

ANTHC TRP Program Assistant

[bkrichards@anthc.org](mailto:bkrichards@anthc.org) or (907) 729-4008



**KANSAS STATE**  
UNIVERSITY



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM

## The End Element 2:

## Oversight & Enforcement

