



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM



TAB

TECHNICAL ASSISTANCE TO BROWNFIELDS

KANSAS STATE  
UNIVERSITY

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

# Element 4: Cleanup Plan Approval, Verification and Certification

## Tier 1: Module 6



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# Tribal TAB Program

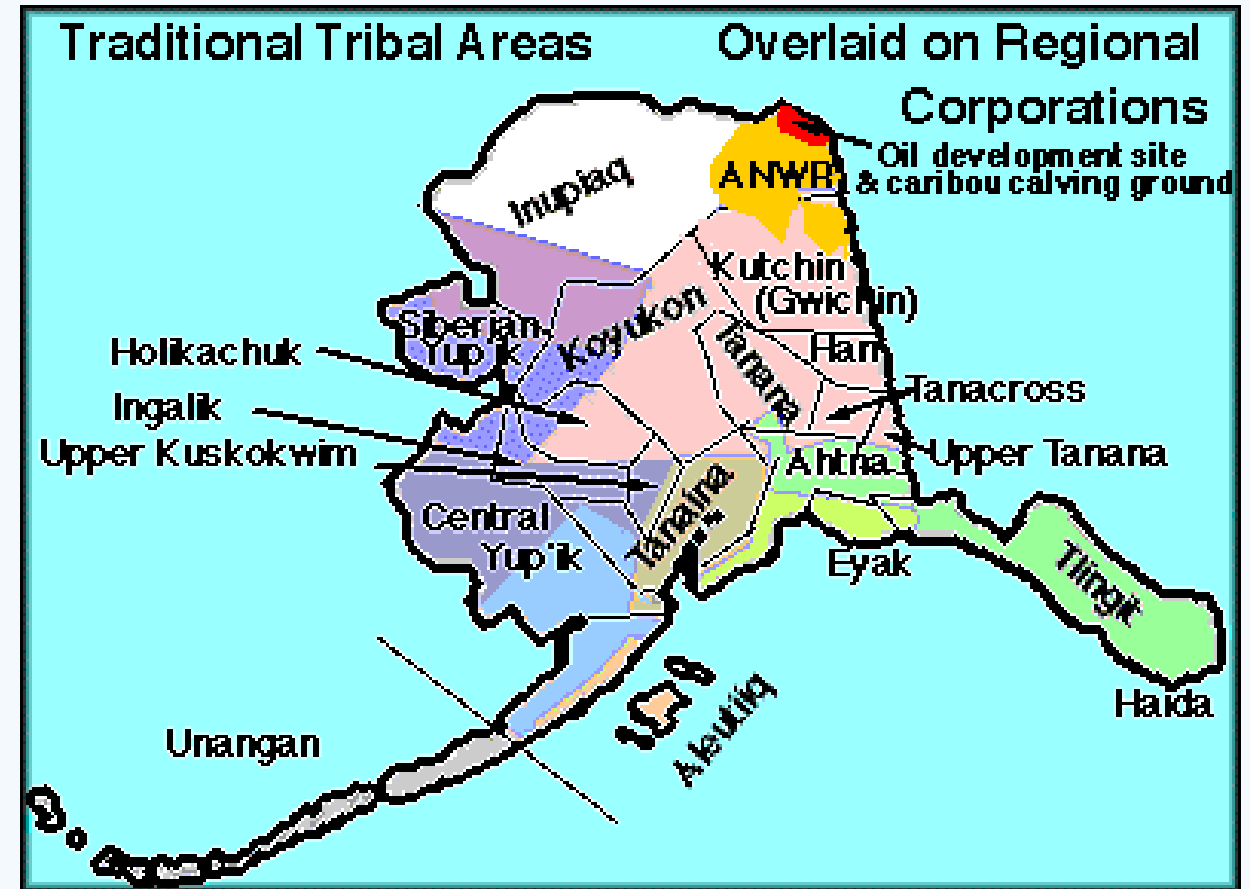
*Providing “Technical Assistance  
to Brownfields” to all U.S.  
Federally Recognized Tribes!*

# Tribal TAB in Alaska

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



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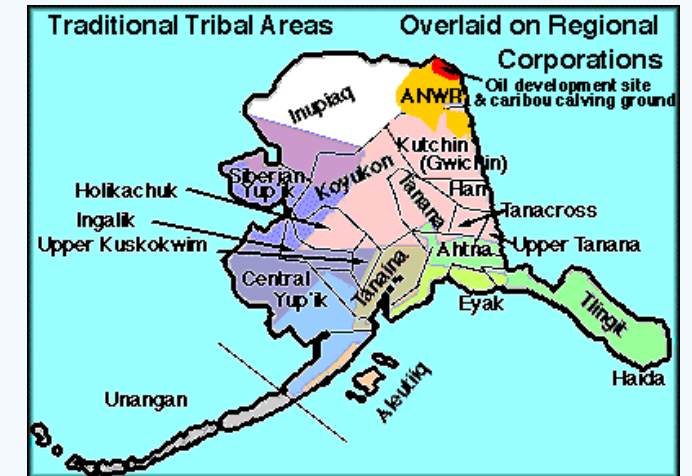
## *ANTHC TRP Role:*

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

# 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.





# 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

## Element 4: The “Law”

*SEC. 128.(a)(2) (D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.*



## *Two Parts of Element 4*

- *Approval of a Cleanup Plan (Response Action)*
- *Verification and Certification that the cleanup/response is complete.*



# *Approval of a Cleanup Plan*



*Element 4: Part 1*

## US EPA Goal

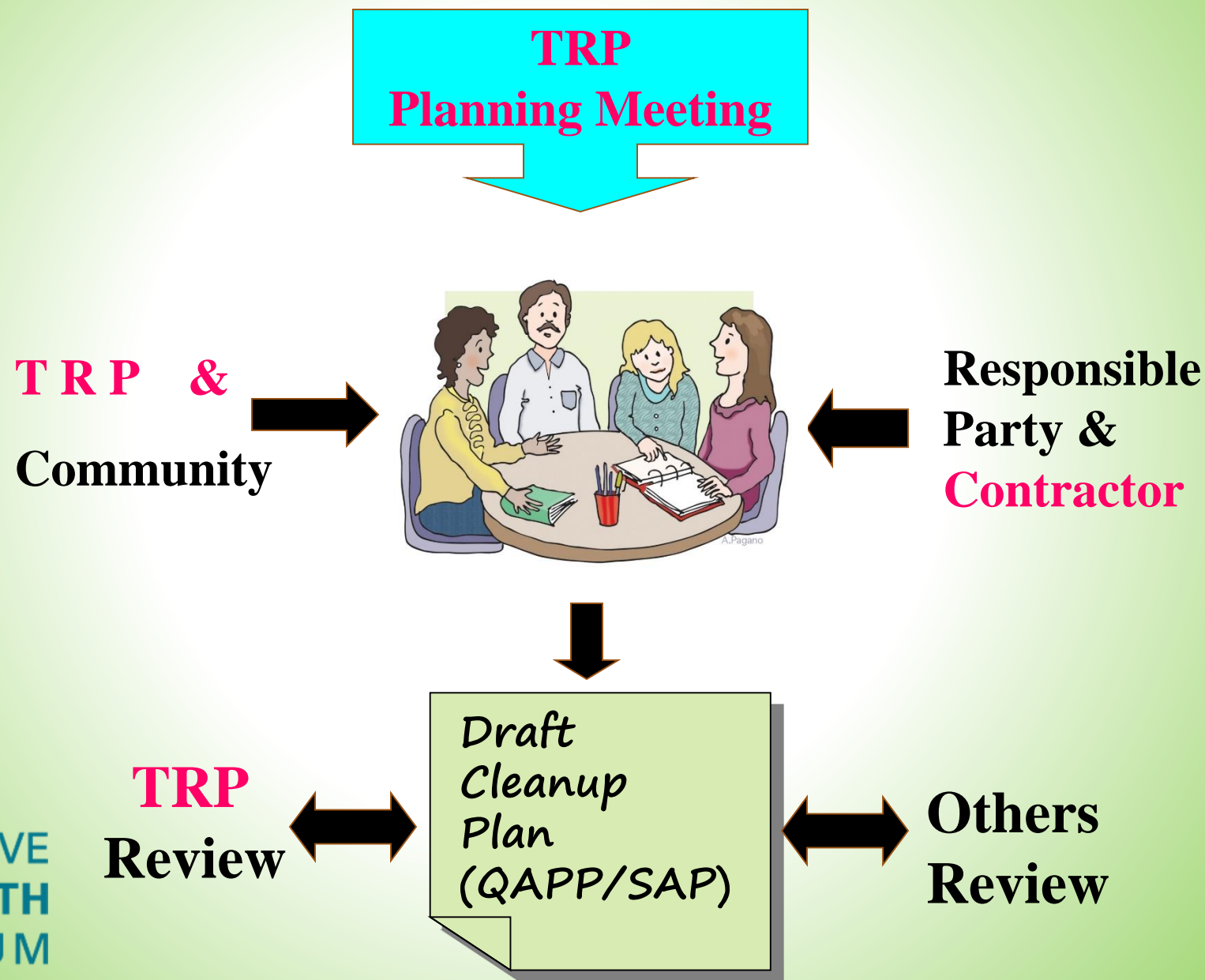
EPA's goal in funding activities under this Element is to have tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete. Written approval by a tribal response program official of a proposed cleanup plan is an example of an approval mechanism.



## How is this part of Element 4 Different from Element 2?

- Element 4 is about the *tribal process* for the approval of a Cleanup Plan, the verification of a Cleanup and the Certification of a Cleanup.
- Element 2 is about the *oversight and enforcement authorities or other mechanisms, and resources* to review and approve a cleanup.

# Typical Clean up Planning Process





Public Meeting

Final-Draft  
Cleanup  
Plan

# Cleanup Planning Process

**TRP  
Approval**

Final  
cleanup  
Plan

Admin/Public  
Record

Cleanup  
Conducted



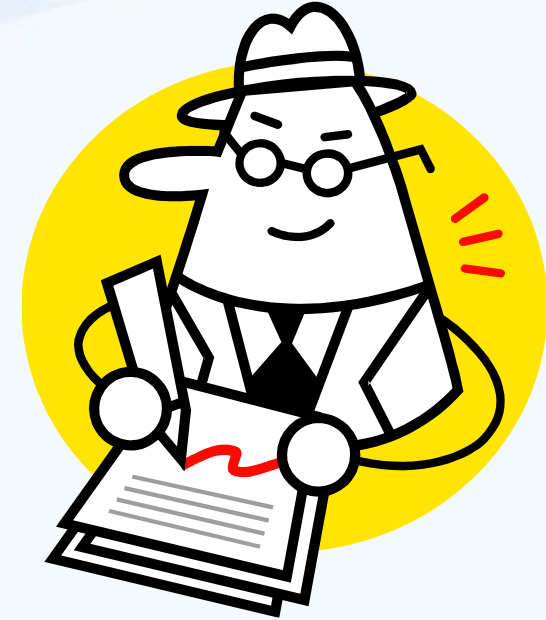
**TRP  
Oversight  
&  
Verify**



## Hire an Expert?

*Hiring a consultant or other expert (e.g. a “licensed site professional”)\* to assist with the review of cleanup plans and other relevant factors can be a grant fundable cost under 128(a) subject to the approval of the EPA Regional grant manager.*

*\* No LSPs in Alaska*



## Verification and Certification of a Cleanup

Element 4: Part 2

## Element 4: Verification & Certification

Tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete.



## US EPA Goal

*EPA's goal in funding activities under this Element is to have tribes include in their response program mechanisms to verify that response actions are complete.*

*Mechanisms can include:*

- ✓ *Tribal Laws/Codes*
- ✓ *Tribal Approval Protocols or Procedures*
- ✓ *Tribal Council Resolution*
- ✓ *Coordination with another Govt. entity*



## Verification

- When a response action is completed there needs to be verification by review and/or audit of the action and its' results to ensure that all remediation requirements for a site have been *successfully implemented or satisfied*.
- The verification should be conducted by someone that has the *expertise and experience* to perform the audit of the results and/or conduct verification sampling and testing.



## Verification

*The verification can include:*

- *A review and audit of all field reports and data to include all relevant environmental media sampling and analysis results; and/or*
- *Independent sampling and analysis of relevant environmental media to verify results of the remediation.*

## Eligible Use of Grant Funds

*Eligible uses of 128(a) grant funds for this Element include, but are not limited to:*

- Auditing site cleanups to verify the completion of the cleanup;*
- Hiring a consultant to provide expertise; and/or*
- Verification at non-brownfields sites (if such activities are included in the tribe's work plan.)*



## Who can conduct Verification?

### Verification can be conducted by:

- Qualified Tribal staff
- Qualified “Environmental Professional” (as specified under 40 CFR §312.10)
- Qualified Tribal contractor (primary or third party)
- US EPA and/or state environmental staff
- Other qualified government staff (BIA, IHS, BLM, AK-DEC, etc.)
- Qualified local government staff



## Certification of Completion

A “Certification of Completion” is generally a letter or document, issued by an authorized Tribal official, stating that all remediation requirements for a site have been successfully implemented or satisfied.

### NOTES:

- *consult the US EPA or state programs for examples of such letters*
- *Your legal counsel will usually need to be involved*



## Certificate of Completion

The certificate is normally requested by and issued to the “person responsible for conducting the response action”.

The “person” is typically the party that owns the property and/or the party that is responsible for the release(s).

*(That would not normally be the contractor actually performing the cleanup, but the party that the contractor is performing the work for and/or the property owner.)*



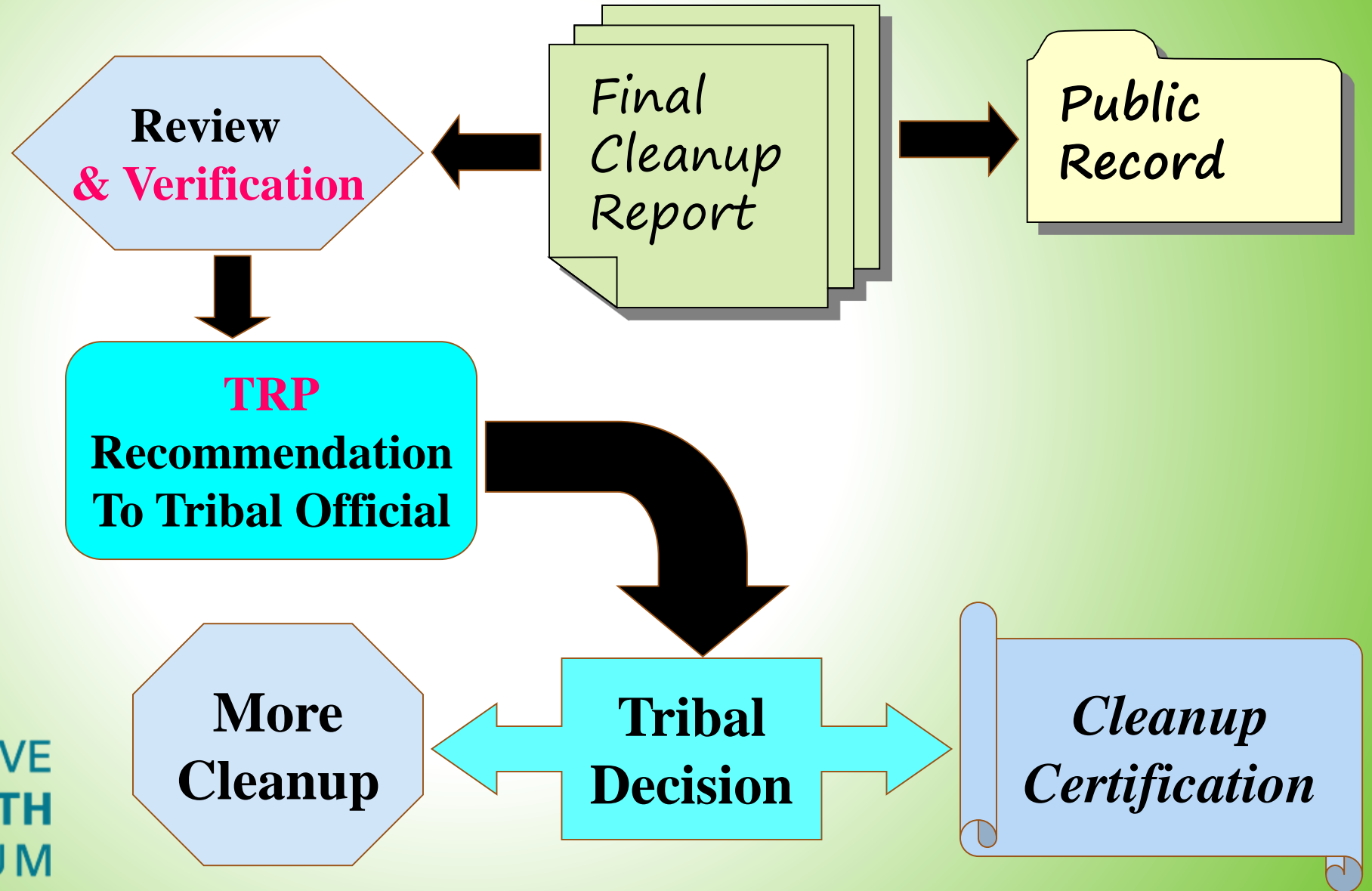
## Other Certificates

### Other Types of Certifications:

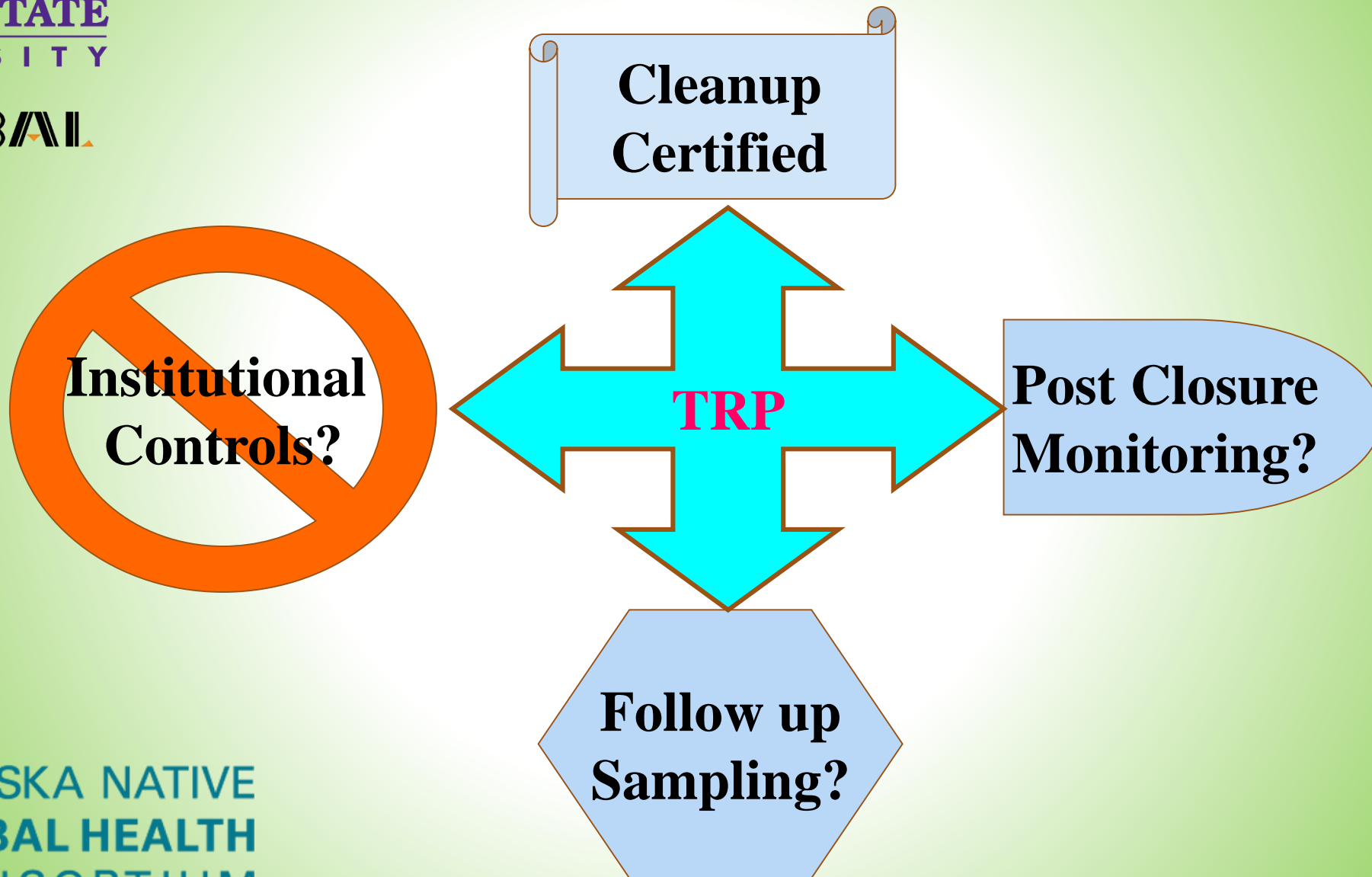
- There are circumstances under which a Tribe might issue a qualified certification to include a:
- Conditional Certificate of Completion;
- Partial Certificate of Completion;
- “No Further Action” (NFA) determination; or
- “Comfort Letter”.

*(Tribal legal counsel should be consulted for the appropriate terminology to be used for a specific situation by the Tribe in accordance with Tribal laws and codes.)*

# Clean Up Completion



# *Cleanup Certification Follow up Needed?*





## Tribal Accomplishments

- *Some Tribes have adopted new laws and codes to implement these authorities and processes.*
- *Tribes have gained some experience with the development and approval of a cleanup plan through TRP 128(a) grant funded site specific cleanups.*
- *Tribes have gained expertise through oversight of cleanups by other parties.*



## Tribal Accomplishments

- Tribes have assisted the U.S. EPA staff in planning and conducting cleanups on their lands under RCRA and CERCLA.
- Tribes have reviewed and commented on cleanup plans developed by other federal agencies and AK-DEC.
- An AK Tribe has been contracted by the DoD to oversee a contractor and conduct a cleanup
- An AK Tribe has used 128(a) funds to verify a DoD Cleanup



## Tribal Issues

- *It may not be clear if the tribe has any existing Jurisdiction or authority in place to require and/or approve a cleanup plan. (do the research!)*
- *Drafting and adopting new tribal laws, regulations or codes can be very time consuming.*
- *It can be difficult to determine who has the jurisdiction and/or the lead to approve a cleanup plan for a site.*



## Tribal Issues

- Availability and costs of proper Tribal legal support
- Funding for verification sampling and analysis not always available.
- Access to necessary expertise needed to assist a tribe with establishing site specific, risk based, cleanup standards and reviewing and approving cleanup technologies.
- The impact of **historic and cultural issues** is becoming more complicated and the consultation and studies required by State or Tribal Historic Preservation Offices (SHPO/THPOs) can affect the remedy selection as well as be time consuming and costly.



## Lessons Learned

- *Need to maximize ability and rights to review and comment/approve of cleanup plans developed by AK-DEC or federal entity.*
- *Need to establish clear tribal processes and, where possible, authority to review and approve cleanup plans.*
- *Need to identify **all tribal entities** that need to be involved in and/or informed of approval of a cleanup plan.*



## Lessons Learned

- *Need expertise and/or technical support to set site specific, risk based, cleanup standards and goals and to gather critical information and data.*
- *Need to educate and inform tribal leaders of cleanup decision making process and goals (ongoing problem due to turn over of elected officials).*



## Lessons Learned

- *The tribal jurisdiction and authority to access a site and conduct sampling and oversight in order to verify and certify a response action needs to be established.*
- *Model Tribal documents and letters should be drafted and receive tribal legal review before they are needed.*



## *Lessons Learned*

- *Tribes need to determine internal and external capabilities and capacity to conduct verification reviews and sampling/analysis in advance.*
- *There may be jurisdictional and/or legal issues to be resolved in order to conduct verification and issue a certification of cleanup.*



## 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*

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*END  
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Approval,  
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