



ALASKA NATIVE  
TRIBAL HEALTH  
CONSORTIUM



TAB

TECHNICAL ASSISTANCE TO BROWNFIELDS

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

# *Site Specific Work: Introduction*

*Tier I: Module 8*



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# Tribal TAB Program

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



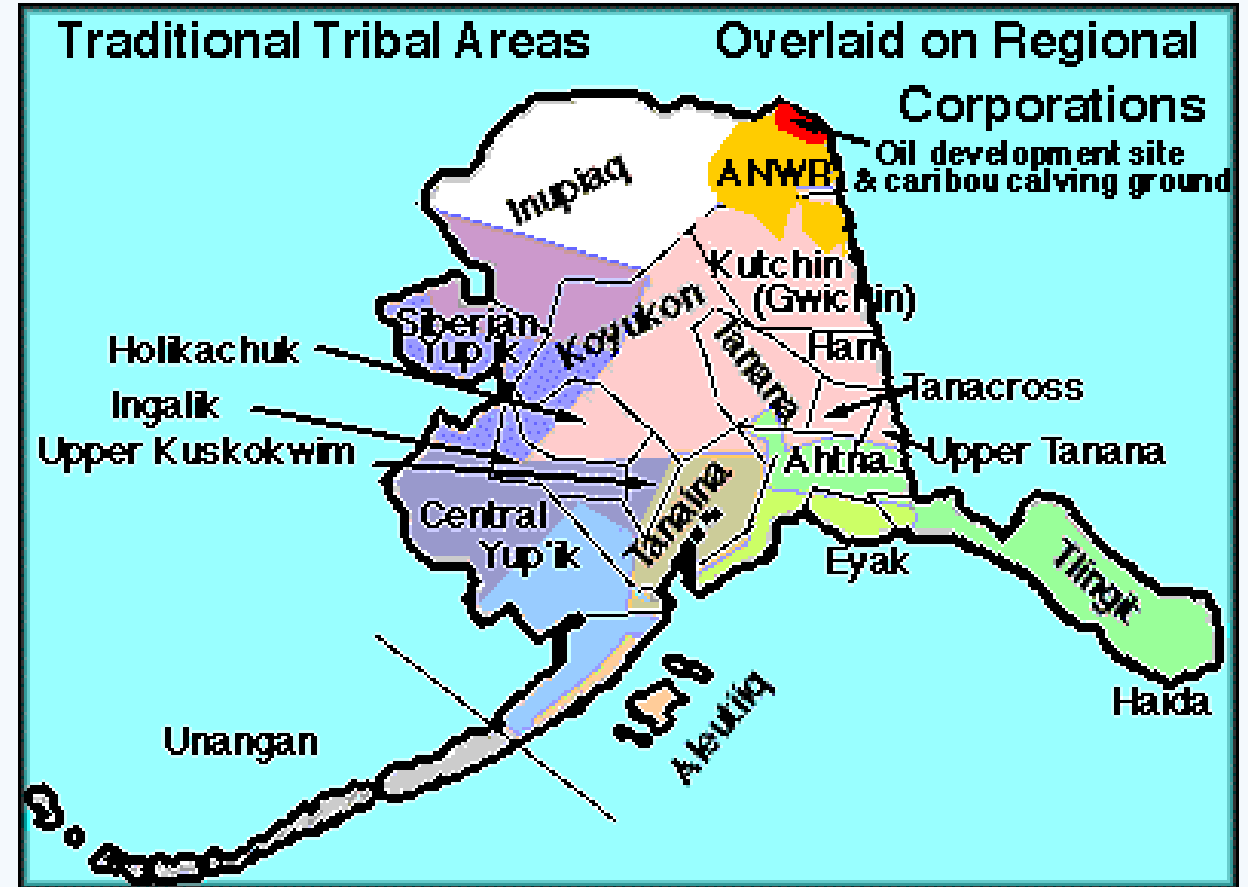


# Tribal TAB in Alaska

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*



When can we do “real work”?

When can we cleanup a  
“Brownfield”?

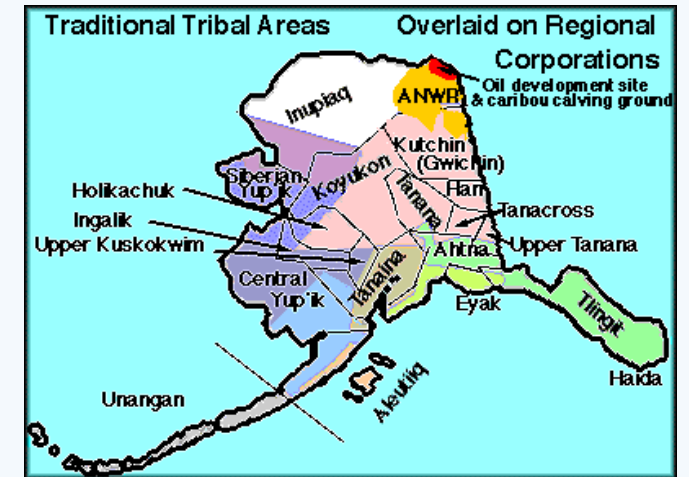


Can you  
clean out my  
dog house?

# Alaskan Tribal Jurisdiction

Who has what jurisdiction and authority to conduct a Cleanup at a specific site 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

# Site Inventory to Cleanup

Cleanup & Verification

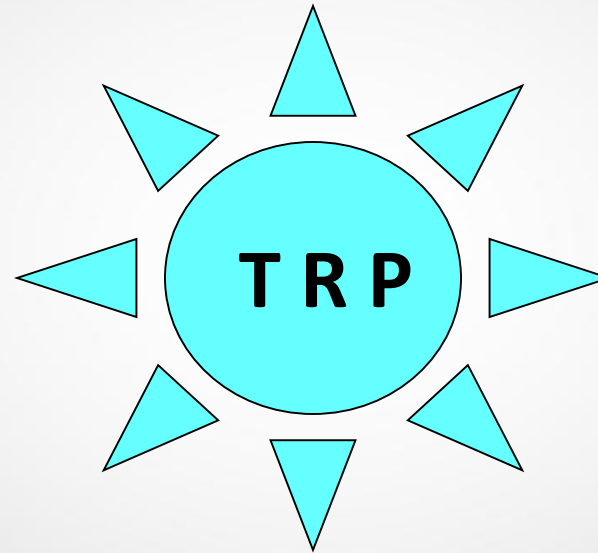


Public Record



Assessment

Site Discovery



Inventory



Prioritization







## What is “Site Specific Work” ?

Site specific activities conducted by the Tribal Response Program with 128(a) grant funds at an eligible site\* could include:

- ASTM Environmental Site Assessments (ESAs); and/or
- Response Actions (cleanups)

*\*This is when the EPA definition of a Brownfield is important!*



## What is a “Site Assessment”?

*Site Assessments are conducted in two phases following ASTM methodologies:*

- Phase I: based upon records searches, interviews and site visit to identify potential “Contaminants of Concern” (CoCs);*

*And, if needed*

- Phase II: Conduct actual sampling and analysis to confirm presence, concentration and extent of contaminants of concern.*

*\*consult the EPA for the current ASTM Methodology*





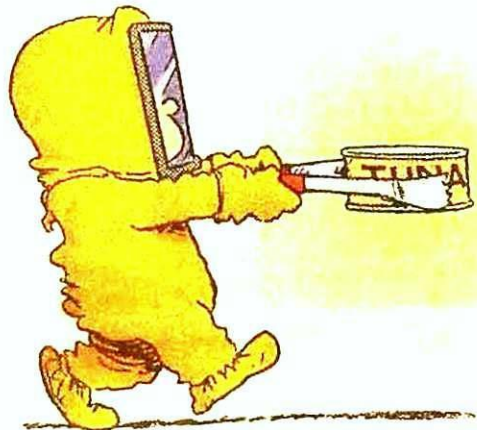
**Use proper safety  
Procedures and  
Personal Protection  
Safety Equipment  
(PPE)**



**Tribal Phase I Assessments: Know the hazards**



Site Work can include  
Emergency-Spill Response  
Oversight & Coordination







## **Site Work can include: Phase II Environmental Site Assessments**

**Former Fuel Storage Area - Hughes, AK**



# Site Work can include: Assessment and Response Actions at Open Dumps







AK Tribe using 128(a)  
Funds to conduct Verification  
of a DOD Cleanup of Dioxins  
That impact Shellfish



Verification of remediation to protect tribal food sources



**NOTE: Site work can include Tribes conducting site specific work at FUDS/DoD/USACE Sites in some cases.**





## The “Law”

The Law does **not** specifically mention site specific activities under 128(a).

However it does state in 128(a)(1)(B): “*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.*”



## US EPA Guidance

A secondary goal of the 128(a) grant is to provide funding for other activities that increase the number of response actions conducted or overseen by a tribal response program.

Therefore, tribes may use 128(a) funds for activities that improve tribal capacity to increase the number of sites at which response actions are conducted under the tribal response program.

## US EPA Guidance

Eligible uses of grant funds include, but are not limited to, *site-specific activities* such as:

- conducting assessments or cleanups at brownfield\* sites;
- technical assistance to a 104 Brownfields Grant recipient (such as a Tribal Corp. or a Borough)

*\*This is when the EPA definition of a Brownfield is important!*

## US EPA Guidance

*Eligible uses of grant funds also include, but are not limited to, site-specific activities such as:*

- development and/or review of site-specific quality assurance project plans (QAPPs);*
- preparation and submission of Property Profile Forms; and*
- auditing site cleanups to verify the completion of the cleanup.*
- Monitoring of ICs or long term remediation*



## US EPA Guidance

*EPA will not provide section 128(a) grants solely for assessment or cleanup of specific brownfield sites; site-specific activities must be part of an overall section 128(a) grant work plan that includes funding for other activities that establish or enhance the four elements;*

## US EPA Guidance

- EPA approval is required before any 128(a) grant funds can be obligated or expended on site specific activities.
- Section 128(a) funds for site specific activities can only be used for assessments or cleanups at sites that meet the definition of a brownfield as defined under CERCLA 101(39). This includes petroleum contaminated brownfield sites.

## US EPA Guidance

- This approval is normally obtained by providing EPA with sufficient information, through submission of a “**Site Specific Eligibility Determination**” request, to review the site eligibility for such funding and compliance with the Law and applicable EPA policies.

*(consult EPA Region 10 for specific information needed)*



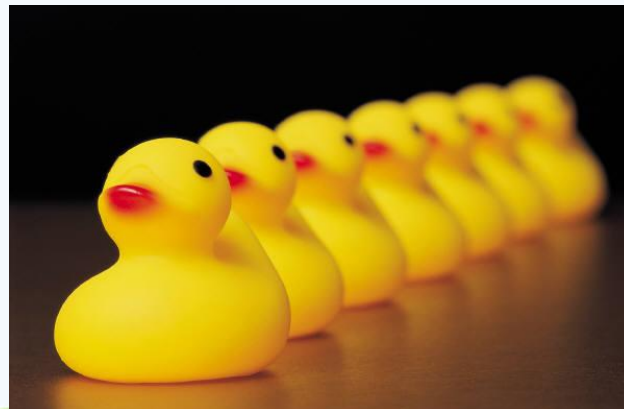
## US EPA Guidance

- No more than \$200,000 per site can be funded for assessments or cleanups with Section 128(a) funds. (typically it is MUCH less)
- Absent EPA approval, the tribe may not use funds awarded under the 128(a) grant to assess or cleanup sites owned or operated by the grant recipient or held in trust by the U.S. Government for the grantee.



## US EPA Methodology

- Attend necessary training
- Understand the (EPA) process and guidance before you conduct a tribal response action (cleanup);
- Avoid making a problem bigger or worse;
- Have your “ducks in a row”



- ✓ Prioritize sites
- ✓ Establish authorities & processes
- ✓ Obtain all necessary approvals
- ✓ Conduct Assessments
- ✓ Conduct Cleanup
- ✓ Verify & Certify



## What are “Data Quality Objectives”?

*DQOs should be determined before conducting the Phase II Site Assessment and be part of the Sampling and Analysis Plan:*

- This will identify potential cleanup standards\* that may apply;*
- Should be based upon anticipated site reuse or redevelopment plans; and*
- Assist in determining data quality and extent of sampling needed for the Phase II Site Assessment*

*\*consult the EPA and/or the State for potential cleanup standards*





## Site Assessments

An “**Environmental Site Assessment**” (ESA) must be conducted by an “environmental professional” as defined under 40 CFR §312.10 for conducting “All Appropriate Inquiry” using appropriate ASTM methodology.

Note: Some qualified Tribal staff have conducted Phase I Assessments



## Other Options

- EPA Targeted Brownfield Assessments (“TBA”) or AK-DEC “DBAC” conducted using their contractor (no 128(a) grant funds needed); or
- EPA or AK-DEC “Removal Action” for elimination of an imminent hazard.

*\*consult EPA or AK-DEC for TBA/DBAC application requirements and time frames*



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# General Comparison: Superfund Process vs 128(a) Tribal Response Program

Superfund	Tribal Response Program
Preliminary Assessment (PA)	Brownfield Inventory
Site Investigation (SI)	ASTM Phase I Site Assessment
Remedial Investigation (RI)	ASTM Phase II Site Assessment
Feasibility Study (FS)	Analysis of Cleanup Alternatives
Record of Decision (ROD)	Response Action Decision
Remedial Action (RA)	Response Action





## Tribal Accomplishments

- *Many Phase I and II ESAs*
- *TRP Response Actions/Cleanups*
- *Verifications of cleanups*
- *Reviews of Brownfield Grant Documents & Reports*
- *Review of remediation plans & reports from other agencies*
- *Changing Tribal & Community Expectations!!*



## Tribal Issues

- *Determination of property ownership and status can hold up a site specific action;*
- *Tribal jurisdiction, or clear lack of such, can be a problem;*
- *Tribal ownership and/or liability in the contamination of a site can prevent approval of use of 128(a) grants funds;*





## Tribal Issues

- Many tribes do not have the laws, codes, procedures or authority in place to make decisions on cleanup standards or to implement institutional controls;
- Many existing tribal contracting policies and procedures are not appropriate or adequate for hiring or overseeing a remediation contractor.



## Lessons Learned

- *Verify property status and ownership;*
- *You can never do too much community outreach about a site and the activities being conducted there (do it early and often);*
- *Be cautious of “free” or non-cost actions or services;*
- *Be prepared to deal with major changes in site conditions or waste issues;*





## Lessons Learned

- *Determine in advance who needs to make what decisions;*
- *Determine in advance who will verify the site work completion and how;*
- *Do not overlook potential partners for funding or seeking grants for site specific work; and*
- *Creative or combined funding may be needed to get the whole job done.*



## Further Implementation

- Increased collaboration and sharing among tribes of laws, codes, procedures and policies that work in the tribal situations and lands;
- Inter-tribal mentoring and experience sharing of contracting and site specific experiences;
- More opportunities for tribal staff to learn site work in the field and shadow or observe experienced EPA or state staff and contractors.



## References:

- “Brownfields Road Map to Understanding Options for Site Investigation and Cleanup” (Fifth Edition)  
EPA Office of Solid Waste and Emergency Response  
EPA 542-R-12-001  
[www.brownfieldstsc.org/roadmap](http://www.brownfieldstsc.org/roadmap)
- AK-DEC Spill Prevention & Response – Brownfields  
<http://dec.alaska.gov/spar>



## 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





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# *The End Introduction to Site Work*

