



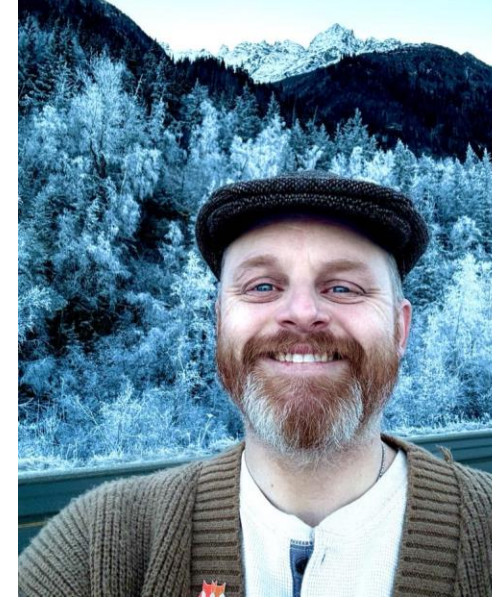
Understanding Your Cooperative Agreement

Presented by Yesenia Chavez
Brownfields Grants Management

Presenters



Yesenia Chavez
EPA Brownfields Project
Manager, Region 5



Richard Chiolero
Tribal Response Program
Coordinator for Chickaloon
Village Traditional Council,
Region 10



Today's Agenda:

- Purpose
- Overview of EPA Brownfield Grants
- Understanding Your CA
 - Workplan, Budget, Reporting
 - Terms & Conditions
 - Examples
- Panel Discussion with 128(a) grantee Richard from Chickaloon, Alaska in Region 10
- Questions



Purpose

- Provide Region 5 Tribes with an overview of the grant competition and types of grants available
- Provide information on resources to understand your cooperative agreement
- Provide an opportunity to learn how Tribes are utilizing the different grants and funding to leverage work they are already conducting
- Provide resources for Tribal Response Coordinators at every level



Grant Types Available to Tribes

128(a) – noncompetitive grant of Annual Appropriation funding for a Tribal Response Program

104(K) – competitive grant

- Assessment
- Assessment Coalition
- **Community-wide Assessment Grants for States and Tribes (CWAGST)**
- Cleanup



Understanding Your Cooperative Agreement

- What is a Cooperative Agreement?
 - A grant agreement between a Tribe and the EPA with oversight from Project Officers.
- Workplan
- Budget
- Reporting
- **Terms and Conditions**



104(k) Grant Types

- **Community-wide Assessment Grant (CWAGST)**
- **Assessment**
 - Brownfields planning and developing site reuse plans, participant support costs eligible
- **Assessment Coalition**
 - Partnership with non-lead members that do not have capacity to apply for/manage grant resources
- **Cleanup**
 - Funding for a recipient to carry out cleanup activities at BF sites owned by applicant, including petroleum and/or hazardous substances, pollutants or contaminants



Leveraging Funding with Competitive Grants

- Community-wide Assessment Grant (CWAGST)
 - Program management
 - Site assessments
 - Outreach
 - Cleanup planning
 - Reuse planning
 - Inventory and prioritization



Cleanup in Milwaukee Mickinley School Lofts

Which type of grant is best?

- What kind of work is most pressing? Number of sites?
- What is your capacity to manage grants?
- Types of proposed projects?
- Urgency of the work?
- Projected timeline?
- Cost of the work?



Cleanup in Wisconsin Point, Fond du Lac Band

104(k) Terms & Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2022 competition for Brownfield Assessment cooperative agreements.
2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.
3. A term and condition or other legally binding provision shall be included in all subawards entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.
4. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.



104(k) Terms & Conditions

II. SITE ELIGIBILITY REQUIREMENTS

A. Eligible Brownfield Site Determinations

1. All brownfield sites that will be addressed using funds from the cooperative agreement must be located within the target area(s) described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan). The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, and/or has defenses to CERCLA liability. This requirement does not apply to site-specific assessment cooperative agreements where this information has been previously provided and approved in threshold eligibility review of the application, and where sites have already been pre-approved by EPA in the CAR's workplan.
2. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.



104(k) Terms & Conditions

II. SITE ELIGIBILITY REQUIREMENTS

A. Eligible Brownfield Site Determinations

3. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

- i. the State determines there is “no viable responsible party” for the site;
- ii. the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
- iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

i. ...

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the determinations.



104(k) Terms & Conditions

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions.

EPA's Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 18 months and 30 months from the date of award. EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances.

Sufficient progress at 18 months is indicated when:

...

B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement.

Substantial involvement, includes, but is not limited to:

a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.

b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA....



104(k) Terms & Conditions

C. Cooperative Agreement Recipient Roles and Responsibilities

1. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to conduct site assessment activities vs. planning activities) and to allow the ability for work be performed concurrently in multiple target areas and/or at sites.
2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff to coordinate, direct, and oversee the brownfield site assessment activities at a given site.
3. The CAR is responsible for ensuring that funding received under this cooperative agreement does not exceed the statutory \$200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be submitted to the EPA Project Officer and approved prior to the expenditure of funding exceeding \$200,000. In no case may funding for site-specific assessment activities exceed \$350,000 on a site receiving a waiver.
CARs expending funding from a Community-wide Assessment cooperative agreement must include this amount in any total funding expended on the site.
4. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable Tribal law and policy cybersecurity requirements.
7. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter).



104(k) Terms & Conditions

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites, and outreach. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k).
- b. Ensuring that an assessment complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.

...

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

- a. Cleanup activities;
- b. Site development activities that are not brownfield site assessment activities (e.g., marketing of property (activities or products created specifically to attract buyers or investors) or construction of a new facility);

...



104(k) Terms & Conditions

V. ASSESSMENT REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

...

VI. PAYMENT AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

A. Payment Schedule

...



128(a) Cooperative Agreement

- Annual Appropriation of Funds to help your Tribal Response Program and create a public record of Brownfields sites and site-specific activities as needed
 - Conduct assessments, cleanups
 - Attend training on Phase I & II ESAs, cleanup planning



Cleanup in City of Hastings, MN



Four Elements

1. Brownfield Inventory and Timely Survey - Establish process, create and update database and improve coordination of research and mapping, publicize information and reuse plans for public review
2. Oversight and Enforcement Authorities - Response action development and enforcement authorities, ensuring adequate cleanups



Cleanup in Wisconsin Point, Fond du Lac Band



Four Elements (cont.)

3. Meaningful Opportunities for Public Participation - Public access and participation for all response actions taken or planned under TRP

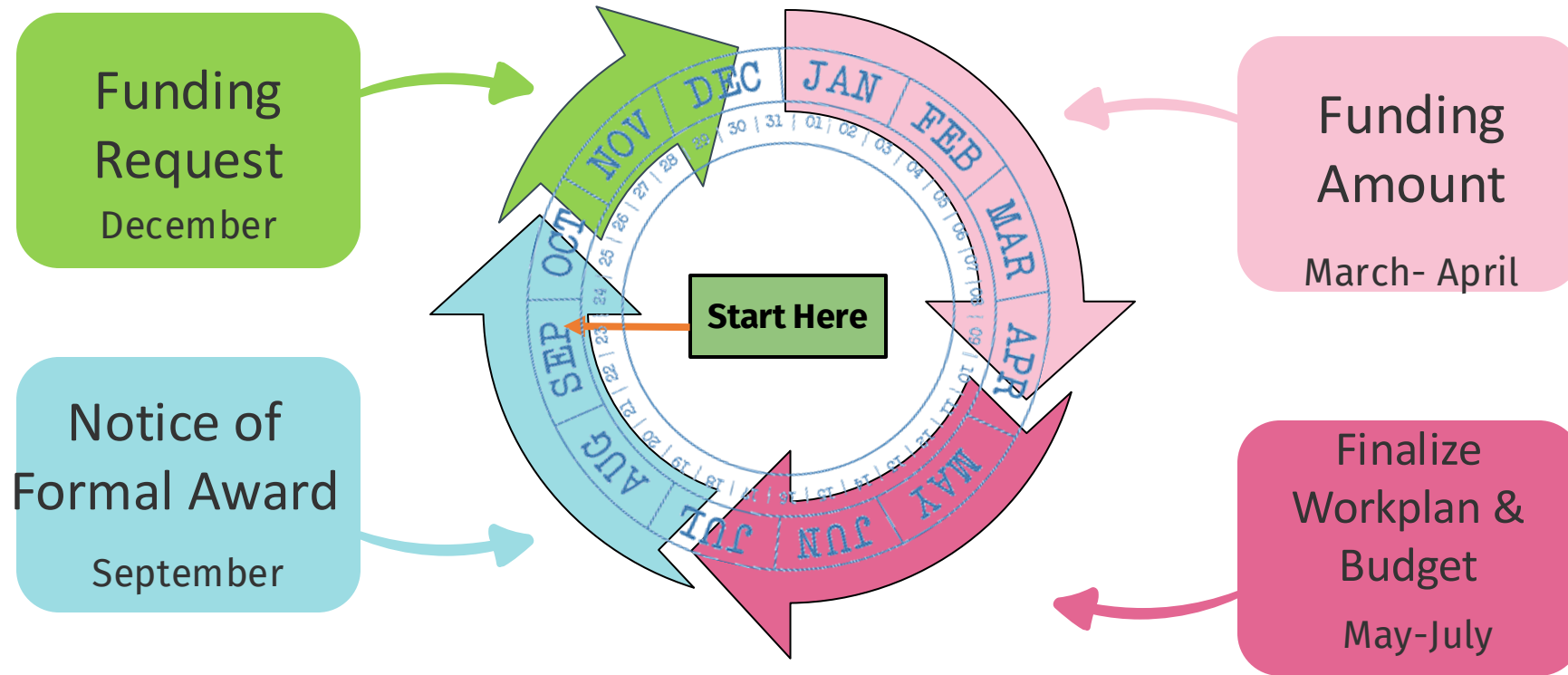
4. Approval of Cleanup Plans/Verification that Cleanup is Complete - Review and audit relevant environmental media sampling and analysis results



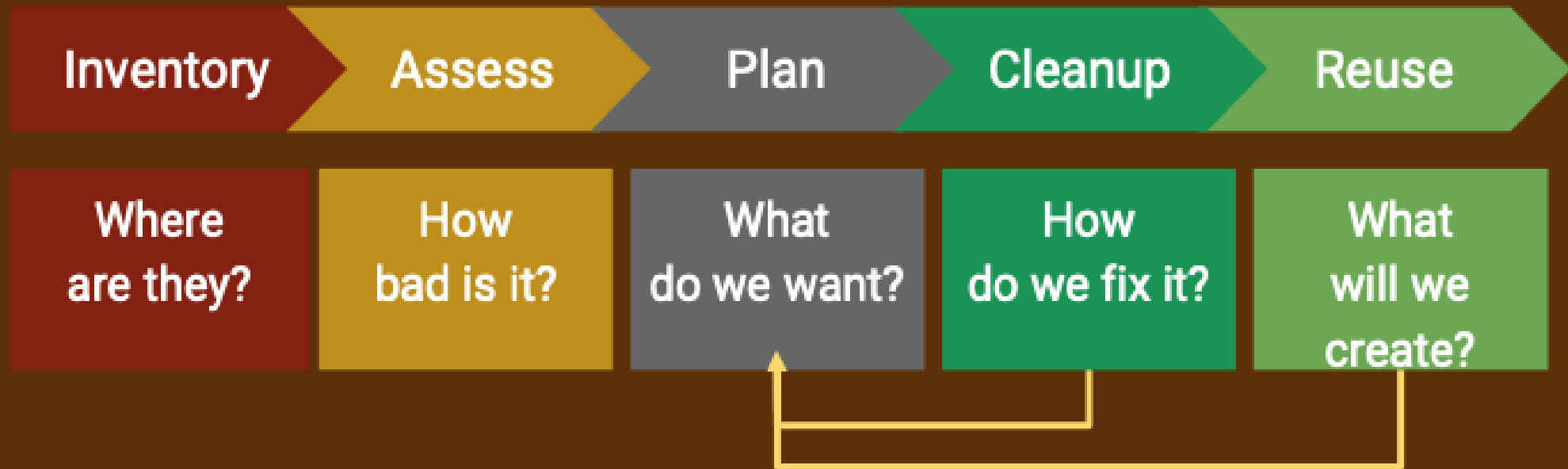
Cleanup in progress at the Riverpoint District in Manitowoc, WI



Tribal Response Program



Tribal Response Program Process



128(a) Terms & Conditions

FY25 State and Tribal Response Program Cooperative Agreement Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients

In implementing this agreement, the Cooperative Agreement Recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 128(a). The CAR shall also ensure that activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.

2. Federal Cross-Cutting Requirements

The CAR must comply with federal cross-cutting requirements including, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 3145); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.



128(a) Terms & Conditions

II. RESPONSE PROGRAM REQUIREMENTS

A. Four Elements

The CAR must demonstrate that it is taking reasonable steps to include, or has already included in its response program, the four elements identified in CERCLA Section 128(a)(2).

1. Public Record System

The CAR must establish a public record system pursuant to CERCLA Section 128(b)(1)(C). The public record must be maintained and updated at least annually and include the requirements listed below.

...

B. Site-Specific Activities

1. Eligible Brownfield Site

Consistent with CERCLA Section 128(a)(2)(C)(iii), EPA guidance, and to the extent authorized by the scope of work for this agreement, the CAR may conduct assessments or cleanups at sites that meet the definition of a “brownfield” site as defined in CERCLA Section 101(39) in response to a request by a person who is or may be affected by a release or threatened release of a hazardous substance, pollutant, contaminant, or petroleum at a brownfield located in the community in which the person works or resides. Assessments and cleanups must comply with all applicable laws and are subject to the following restrictions:

a. Absent approval by EPA’s Project Officer, no more than \$250,000 per site can be funded ...

2. Community Involvement and Cleanup Plans



128(a) Terms & Conditions

D. Performance Reporting Requirements

1. Program Activity Levels (PALs)

CARs must report Program Activity Levels once annually when the Section 128(a) funding request is due to the appropriate EPA Regional Officer. The PALs summarize the work from the previous federal fiscal year, therefore, a CAR's responses to the PALs questions should reflect activities for the period covering the last federal fiscal year (October 1 – September 30).

CARs are required to provide PALs information directly into [EPA's Assessment, Cleanup and Redevelopment Exchange System \(ACRES\)](#) database.

For detailed instructions on how to report PALs in ACRES, please see the Program Activity Levels Reporting Form

Instructions at <https://www.epa.gov/brownfields/acres-training-tips-and-tools>.

For technical support, contact 703-284-8212 or email acres_help@epa.gov. For questions specific to your grant data, contact your [EPA Regional Representative](#).

2. Quarterly Performance Reporting

CAR agrees to provide quarterly performance reports. The reports will be due no later than 30 calendar days after the reporting period.

All interim and final progress reports must prominently display the following three relevant Essential Elements as reflected in the current EPA strategic plan:

Strategic Plan Goal

Strategic Plan Objective

Work plan Commitments and Timeframes

a. The CAR will report on milestones, activities, and outputs achieved under this agreement. Examples of items to include: ...



Any Questions?

Yesenia Chavez
Brownfields Project Manager,
Region 5
Chavez.Yesenia@epa.gov



Cleanup in Wisconsin Point, Fond du Lac Band

