

The Four Elements & Public Record Summary

Element definitions from: Tribal Brownfields Forum (tribalbrownfields.org)

General Management of Cooperative Agreement: Covers All Elements

These are some ideas of what can go in the “General Management Section” of a Fund Request/Work Plan.

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

- Prepare request for Brownfield funding as it ties to establishing and enhancing the four elements.
- Developing and enacting regulations, ordinances, and/or procedures that cover all roles and responsibilities of a response program.
- Create a Response Program and/or Brownfield Program position(s) to oversee technical and/or administrative activities under the grant; e.g. program coordinator, grants specialist, remedial project manager, GIS specialist, public involvement coordinator, interns, etc.
- Prepare a CERCLA 128(a) request.
- Establish and manage a multi-departmental Response Team including development of standard operating procedures, emergency management plans, meeting logistics, and identification of potential pollution/contamination problems.
- Attend and/or provide training* to staff that supports the response/brownfield program, such as but not limited to Occupational Safety and Health Administration (OSHA) 40-hour, Asbestos and Lead Abatement, Freon removal, mitigation of mold, solid waste management, and GIS training*.
- Attend and/or provide training* to staff that supports administrative functions of the response program including grants management; effective communications to enhance public outreach efforts; and website development.
- Purchase supplies to support grant activities; such as but not limited to, office supplies, computers, computer software, phones, faxes, cameras, GIS/GPS items.
- Procure monitoring/testing equipment, containment booms, personal protective equipment.
- Lease a vehicle to conduct activities authorized under the grant.
- Reasonable travel to conferences, training*, coordinate with relevant contacts/communities, consult with peer mentor.
- To conduct multi-media civil (non-delegated program authority) inspections of actual or potential brownfield sites, for example oil and gas production sites, underground injection control sites, and underground storage tank sites.
- Develop integrated solid waste management plans (ISWMP) and oversight.

***All TRAINING, staff development, site-specific activities should build programmatic capacity through the development of standard operating procedures, succession planning, and internal processes to retain programmatic knowledge beyond the individual being trained.**

Element 1: Brownfield Inventory: Timely Survey & Inventory

A brownfield is typically a property that is underdeveloped or underutilized because of the perception that it is contaminated by a hazardous substance. For example, abandoned gas stations, open dumps, mining sites and abandoned homes contaminated by lead paint and asbestos may all qualify as brownfields. A Brownfield Inventory is an important first step in determining the need for assessment and cleanup and can be used to identify properties that pose potential future risks.

The KSU-TAB Brownfield Inventory Tool (BIT) is available free of charge for tribes to use to create a database of tribal properties for internal use, and can include any property, including cultural sites as well as those qualifying for EPA Assessment funds. BIT interfaces with EPA ACRES to fulfill reporting requirements when EPA funds have been used for assessment and cleanup.

CVTC Note:

- *We keep our Element 1 (E1) Site Inventory on Airtable.com. (This is an internal-only document.)*
- *[In progress] criteria for site-ranking under this element.*
- *#MonthlyMonitoring – see the “Public Record” section, below.*

ANCSA Note:

- Lisa Griswold, ANTHC: A lot of ANCSA sites qualify for Brownfields in the sense that quite a few of them are not being used because of the real or perceived presence of contamination. So theoretically, being a part of this effort could help grow your inventory of Brownfield sites. Not every Brownfield site is an ANCSA site and not every ANCSA site may be a Brownfield site, but sites can be both a Brownfield site and an ANCSA site. The two are so intertwined, Senator Sullivan is looking at the Brownfields reauthorization act to help assist ANCSA sites.

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

- Update annually or as appropriate.
- Establish a process to determine locations and general characteristics of brownfield sites with the goal of redeveloping or reusing sites.
- Create and update a database to help prioritize future brownfield site actions.
- Integrate existing environmental program databases to improve coordination, can include Underground Storage Tanks/Leaking Underground Storage Tanks (UST/LUST), Resource Conservation Recovery Act (RCRA), Water, Air, Emergency Response, etc.
- Identify open dumps including locations, size, type of hazardous waste and contaminants.
- Publicize maps, site fact sheets, reuse plans, website development and maintenance that support the availability of the database for public review.
- Research ownership, history, type of contamination, past or proposed response actions for potential brownfield sites.
- Use GIS/GPS to create a map of the sites identified.
- Gather information on potential sites including abandoned/run-down buildings that may harbor asbestos, lead paint or mold contamination, drums, dumps sites, maintenance facilities, service stations, industrial or agricultural operations.
- Consult with Tribe/local residents/the Elders on the location of possible brownfields sites.

Element 2: Oversight and Enforcement Authorities

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:

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

Therefore: This Element has two parts:

- Development of oversight and enforcement authorities or other mechanisms and resources.
- Ensuring that response actions or cleanups conducted under this program are adequate and completed (similar to Element 4).

In Alaska:

Element 2: Oversight and enforcement authorities or other mechanisms and resources: *“The State of Alaska Department of Environmental Conservation (DEC) has legal oversight and enforcement authorities in statute that meet the requirements of this element, with the exception of the Metlakatla Tribe. Alaska Tribes can move towards oversight through tribal creation of codes and ordinances over Tribal members that meet or exceed the state of Alaska standards. In coordinating and collaborating with the Alaska Department of Environmental Conservation, a federally recognized tribe does not give up any of their sovereign rights.”*

CVTC Note:

- This can include Spill Response Materials and training to use them.
- Look at the DEC Database of Contaminated Sites for any sites in your Public Record that have Institutional Controls (ICs) – do a site visit and write a report on the status of the ICs on the date of your visit.

ANCSA Note:

Lisa Griswold, ANTHC: Being involved with these sites gives Chickaloon the ability to help oversee the response actions on these sites as they move forward. Attending the ANCSA PG meetings and learning more about the Common Operating Picture and site identification efforts is arguably a form of oversight. Chickaloon could also help the EPA and DEC make sure that the information in their respective databases is correct and up to date. In addition to that, because the law for the funding is not as stringent as Brownfields, Chickaloon could also apply for ANCSA funding to address sites (possibly including cleanup), as indicated in Element 2.b.

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

- Review existing response actions to assure they are protective of human health and the environment.
- Develop site closure protocols or procedures.
- Establish an inspection protocol to include inspection reports, surveying new sites, mapping of sites, public input, safety issues and concerns of sites.
- Establish an operational plan to inspect sites, including random inspections and surprise visits.
- Provide training* for Response Program/Brownfield Coordinator to acquire certification to inspect and assess brownfield sites.
- Research existing environmental oversight and enforcement authorities. Develop laws, regulations or policies regarding oversight and enforcement authorities.
- Work with Tribal and Federal entities to assure enforcement capabilities are in compliance with federal regulations.
- Develop procedures to ensure response actions are conducted in a lawful manner and protect human health and the environment.
- Obtain a legal review of Tribal codes/ordinances pertaining to environmental programs for environmental response, solid waste management, etc.
- Develop proficiency with the major goals, programs, and requirements in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Emergency Planning and Community Right to Know Act (EPCRA), and Brownfields; the national structure for implementing these programs; and the EPA regional personnel and organization.

- Ensure that the Tribe has an EPCRA-compliant emergency response plan or that Tribal lands and resources are included in a regional plan.

Element 3: Meaningful Opportunities for Public Participation

This element requires that tribes put in place the mechanisms and resources needed to provide meaningful opportunities for public participation, including:

- public access to documents that the State, tribe, or party conducting the cleanup is relying on or developing to make cleanup decisions or conduct site activities including input into site prioritization
- prior notice and opportunity for comment on the proposed cleanup plans and site activities and
- a mechanism by which—
 1. a site assessment can be requested by a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which they work or live; and
 2. an appropriate State or Tribal official shall consider and appropriately respond to that request

EPA will allow tribes to use TRP Grant funds to make information available to the public via the internet or other means.

- The minimum requirement is for public notification and participation for all response actions taken or planned under the TRP.
- EPA encourage public notification and participation for activities for all response actions taken or planned on tribal lands regardless of jurisdiction.

CVTC Note:

- *This can include distributing (DEC) Spill Reporting Placards to the Community where chemicals/oil are stored (update the placards on schools or community buildings like schools).*

ANCSA Note:

Lisa Griswold, ANTHC: Depending on how involved you want to be, there is going to be a large component of outreach in order to try to ensure that every person that wants to apply for funding, receives funding and gets their site cleaned up. In addition to doing outreach regarding Brownfield sites, you could add some information about the ANCSA funding program as well since Brownfields and ANCSA sites can be interlinked. ANTHC's funding will be coming out in October, and I should have some handouts that you could add to your repertoire if you wanted. Even just encouraging others to attend ANCSA PG meetings is giving them an opportunity to give feedback on the issues that affect them.

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

- Incorporate Brownfields into public outreach activities including public and youth education, quarterly public meetings in each district, local media, regional news outlets and publications, radio stations, multi-media center.
- Provide public access and ability to comment on environmental issues through a website, via email, public meetings, and newsletters.
- Establish procedure for prior notice and opportunity for public comment as well as a mechanism by which an affected person may request a site assessment be conducted.
- Develop and implement a process that outlines how various Tribal programs will coordinate to address and respond to public comments.
- Meet regularly with the other Tribal environmental programs to get input and share information with various entities on team. For example, programs could include Tribal Health Program, Tribal Rural Water Supply, Environmental Protection Program, Transportation, Economic Development, Tribal Employment Rights Ordinance/Office (TERO), Water and Sewer, Bombing Range Program Community Health Representatives, Indian Health Service, BIA.
- Promulgate or refine public involvement section of Tribal environmental review code to meet the statutory criteria of 128(a)(2)(C).
- Develop and implement a youth education program that focuses on understanding contaminated sites and the impact to the community, subsistence, and traditional ways.
- Hire a translator to communicate environmental information in native language.
- Capture Tribal Environmental Knowledge (TEK).
- Travel to potentially impacted communities to visit sites and conduct interviews, meetings, and negotiations concerning site assessment and remediation.

Element 4: Approval of Cleanup Plans/Verification that Cleanup is Complete

EPA's goal in funding activities under Element 4 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.

Mechanisms to approve cleanup plans can include:

- Tribal Laws/Codes
- Tribal Approval Protocols or Procedures
- Tribal Council Resolution

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.

In Alaska:

Element 4: Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete: *"In Alaska, DEC has the capacity and statutory authority to approve cleanup plans and verify that cleanup efforts fulfill a responsible party's obligations. The [TRP name] TRP will work directly with the State of Alaska to ensure all site-activity in the community is verified and certified. As an example, the [TRP] coordinates and collaborates with the DEC in the approval of the cleanup plans and throughout the cleanup planning process. In coordinating and collaborating with the Alaska Department of Environmental Conservation, a federally recognized tribe does not give up any of their sovereign rights."*

CVTC Note:

- *Participate in the area committee meetings (AIAC, ARRT, AWA).*
- *Provide comments or plan* updates or policy guidance*
*(*spill response plans from area committee meetings, above)*
- *Professional Spill-Drill Training – lots of flexibility*
- *#MonthlyMonitoring – DEC CS Staff Quarterly Correspondence*

ANCSA Note:

Lisa Griswold, ANTHC: I am not sure if the Partnership Group will focus on sites going through cleanup in the sense of prioritizing them, but it should help showcase the sites that have made it through cleanup and how they got there which could help inform how Chickaloon may want to be involved in the process. And though ADEC's database is the OG when it comes to tracking site data, the EPA's Common Operating Picture should be able to give a broader and more in-depth picture of where each site stands. For example, instead of a site being "active", the Common Operating Picture would have "Site Identification" "Eligibility Status" "Assessment Status" "Cleanup Plan Status" "Cleanup Status" etc. Instead of running a report on the DEC database and sorting through all of the "active sites" looking for those going into cleanup to check on, running a report on the Common Operating Picture should allow Chickaloon to more closely track sites that are going into cleanup and verifying that the site is cleaned up.

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

- Research existing cleanup plans and verification procedures. Create a draft Tribal cleanup and verification plan and implement a review process.
- Establish a system to store information allowing for transparency and access.
- Obtain a Tribal Council Resolution on process for approval of cleanup plans.
- Implementation of approval process of cleanup activities.
- Coordinate with potential land users to obtain clearance through the Environmental Programs Division and/or Tribe's Land Division to ensure activities are in compliance and protective of human health and the environment.
- Develop an administrative closure plan for open dumps.

- Create regulations for risk-based cleanup standards.
- Develop and implement a process for certifying cleanup complete.
- Establish system and procedures for implementing institutional controls where, after completion of response, site is not suitable for unrestricted use.

Public Record:

Each tribe receiving financial assistance under 128(a) shall maintain and update, not less than annually, and make available to the public a record of sites, by name and location, at which:

- response actions have been completed in the previous year; and
- response actions are planned for the next year.

Inventory vs Public Record?

The “**Brownfield Inventory**” (Element 1) is a list of ALL actual or potential brownfield sites.

The “**Public Record**” is a list of only those sites that have been cleaned up last year or will be cleaned up next year, as well as any Institutional Controls that are in place.

CVTC Note:

The Public Record is a separate requirement for Tribal Response Programs.

It is prudent to keep your Element 1 Site Inventory Separate from the Public Record.

According to the above definitions, it looks like any properties that are currently on the Public Record that don’t meet the requirements should be moved to the Element 1 Site Inventory instead. If work starts to happen on a site that was moved to the E1 Site Inventory, it should be moved back to the Public Record. (REC: This seems messy, though.)

- The work the TRP Coordinator does on the Public Record is tracked on the work log as #MonthlyMonitoring.
- Region 10 (R10) receives a Public Record Verification Tool every year from the EPA Project Officers. This is a five (5)-tab Excel document to use to make sure that the Public Record meets the stringent requirements set forth by the EPA. Basically, if you want your Fund Request to be accepted, you need to make sure that your Public Record is up-to-snuff.

Many of these properties are from the DEC Website for contaminated sites:

<https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Search>

New sites are added from several other databases:

Reported Spills: <https://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillSearch>

When searching for a spill from the Spill Search database, narrow it down by populating the search fields with these terms:

Area: Central Alaska

Subarea: Cook Inlet

Region: Mat-Su Valley

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

- Update annually, or more often if appropriate.
- Include site locations, response actions in previous year, and actions planned in upcoming year.
- Develop a process to track institutional controls after response actions have been completed.
- Post notices to inform community members of sites. Notices can be flyers, newspaper ads, newsletters, presentations to Tribal Council and radio/TV/internet announcements, and any other efforts to make the public record accessible, etc.
- Establish publicly available files of site information in environmental agency office.
- Coordinate with Bureau of Indian Affairs (BIA) on trust lands.
- Use Geographic Information System (GIS)/Global Position System (GPS) to create a map of the sites identified.
- Develop processes that ensure long-term maintenance of information on Institutional Controls (ICs)/Engineering Controls (ECs).

Site-Specific Activities: Pending Program Priorities and Project Manager Approval

CERCLA 128(a) State and Tribal Response Program Activities Matrix (16 Nov 2023):

Conduct Assessments

- Conduct environmental assessments on potential Brownfields sites by Environmental Professionals as defined at 40 CFR 312.10.
- Obtain training* on conducting Phase 1 & 2 environmental sites assessments to develop an internal standard operating procedure.
- Prepare a request for proposal and negotiate contract for environmental professional assistance in conducting site work.
- Submit a request for a Targeted Brownfield Assessment.

Conduct Cleanups

- Conduct cleanup on Brownfields sites by trained certified staff and/or by hiring a qualified contractor.
- Attend training* on cleanup planning and other requirements for brownfield sites in order to develop an internal standard operating procedure.
- Prepare request for Brownfield funding as it ties to establishing and enhancing the four elements.
- Prepare documents needed to conduct cleanup; including, Community Involvement Plan, Analysis of Brownfield Cleanup Alternatives, Quality Assurance Plans for confirmation sampling, Endangered Species Act (ESA)/National Historical Preservation Act (NHPA) and other federal requirements

Capitalizing a Revolving Loan Fund

- Prepare request for Revolving Loan Fund (RLF) funding as it ties to establishing and enhancing the four elements.
- Support the development and implementation of an RLF. Note: 128a funds for RLF are awarded under a separate cooperative agreement.

Funding for Environmental Insurance/Mechanisms

- Research insurance options available for insuring site-specific work.
- Purchase insurance for cleanup projects.

***All TRAINING, staff development, site-specific activities should build programmatic capacity through the development of standard operating procedures, succession planning, and internal processes to retain programmatic knowledge beyond the individual being trained.**