

of EPA's Brownfields Assessment grantees conduct inventories of brownfield sites in their communities or jurisdictions. EPA encourages States and tribes to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

Oversight and enforcement authorities or other mechanisms and resources. State and tribal response programs must include, or be taking reasonable steps to include, 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 State law; and
- The necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

*Mechanisms and resources to provide meaningful opportunities for public participation.*⁶ States and tribes must include, or be taking reasonable steps to include, in their response program mechanisms and resources for public participation, including, at a minimum:

- Public access to documents and related materials that a State, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- Prior notice and opportunity for public comment on cleanup plans and site activity; and
- A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate State or tribal official must consider this request and appropriately respond.

Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes must include, or be taking reasonable steps to include, in their response programs mechanisms to approve cleanup plans. In addition States and 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 the State,

the tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete. Written approval by a State or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

Public Record Requirement

States and tribes (including those with MOAs) that received section 128(a) funding in FY03 must have established and maintained a public record system, described below, in order to receive funds in FY04. Failure to comply with this statutory requirement will result in a denial of funding for FY04 (this includes funding through an incremental grant funding mechanism). Recipients receiving section 128(a) funding for the first time in FY04 must demonstrate, to be eligible for funding in FY05, that they established and maintained the public record, as described below.

Specifically, under section 128(b)(1)(C), States and tribes must:

- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
- Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

Distinguishing the "survey and inventory" element from the "public record." It is important to note that the public record requirement differs from the "timely survey and inventory" element described in the "Four Elements" section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the "timely survey and inventory" element, described above, refers to a general approach to identifying brownfield sites.

Making the public record easily accessible. EPA's goal is to enable States and tribes to make the public record and other information, such as information

from the "survey and inventory" element, easily accessible. For this reason, EPA will allow States and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the "survey and inventory" element, available to the public via the internet or other means. For example, the Agency would support funding State and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.⁷ A State or tribe may also choose to use the section 128(a) funds to make their survey and inventory information available on the Internet as well.

Long-term maintenance of the public record. EPA encourages States and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, States or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.⁸

Use of Funding

Overview

Section 128(a)(1)(B) describes the eligible uses of grants funding by States and tribes. In general, a State or tribe may use a grant to "establish or enhance" their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and tribes may use section 128(a) funding to, among other things:

- Develop legislation, regulations, procedures, guidance, *etc.* that would establish or enhance the administrative and legal structure of their response programs;
- Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match on the amount of section 128(a) funds used for

⁷ For further information on latitude and longitude information, please see EPA's data standards Web site available at [http://oaspub.epa.gov/edr/epastd\\$.startup](http://oaspub.epa.gov/edr/epastd$.startup).

⁸ States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at <http://www.epa.gov/superfund/action/ic/index.htm>.

⁶ States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at <http://www.epa.gov/superfund/action/community/index.htm>.