



Office of Solid Waste and Emergency Response Tribal Strategy

**EPA & TRIBAL PARTNERSHIP TO
PRESERVE AND RESTORE LAND
IN INDIAN COUNTRY**



November 2008

NOTICE

This document, *OSWER Tribal Strategy: EPA and Tribal Partnership to Preserve and Restore Land in Indian Country*, is intended to provide guidance regarding implementation of the OSWER Tribal Program. It is designed to be consistent with the April 29, 1994, Presidential Memorandum regarding government-to-government relations with native American tribal governments and the *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (“Indian Policy”), which addresses working with federally-recognized tribal governments on a government-to-government basis. This Tribal Strategy does not, however, substitute for requirements in federal statutes or regulations, nor is it a requirement itself. It is not intended to create any right or trust responsibility enforceable in any cause of action by any party against the United States, its agencies, or offices, or any person. Thus, it does not impose any legally binding requirements on EPA. In addition, this guidance does not confer legal rights or obligations or impose legal obligations upon the tribes or any member of the public. EPA may change this Tribal Strategy in the future, as needed, without public notice. Additionally, terms and interpretations used in this Tribal Strategy are unique to and consistent with the federal trust responsibility to federally-recognized tribes, the need to consult with tribal governments on a government-to-government basis, and the EPA Indian Policy. EPA welcomes public comment on this Tribal Strategy at any time, and will consider those comments in any future revisions of the document.

Table of Contents

| | |
|--|-----------|
| I. Introduction | 1 |
| II. Overview of OSWER's Programs | 2 |
| III. Development of the OSWER Tribal Strategy..... | 6 |
| IV. EPA Strategic Plan, the Administrator's Action Plan, and OSWER Action Plan..... | 7 |
| V. OSWER Tribal Program's Mission, Goals, Strategies, Activities, Measures, and Indicators..... | 9 |
| A. Cross-Program Measurement..... | 10 |
| B. Program-Specific Goals, Strategies, Activities and Measures | 11 |
| 1. OSWER-wide (IPCO)..... | 12 |
| 2. Solid and Hazardous Waste | 15 |
| 3. Superfund | 19 |
| 4. Brownfields..... | 22 |
| 5. Underground Storage Tanks (USTs) | 25 |
| 6. Emergency Management..... | 28 |
| 7. Federal Facilities Restoration and Reuse | 31 |
| VI. Summary of OSWER's Tribal Program Measures and Indicators | 33 |
| Appendix A – Summary EPA and OSWER National Indian Programs | 35 |
| Appendix B – Information on OSWER Programs | 37 |
| Appendix C – OSWER Statutory Authorities and Status of Tribes | 46 |
| Appendix D – List of References | 48 |
| Appendix E – Links to EPA Tribal Contacts | 49 |
| Appendix F – Acronyms..... | 50 |

I. Introduction

EPA's Office of Solid Waste and Emergency Response (OSWER) is committed to protecting human health and the environment in Indian country while supporting tribes' self government, acting consistent with the federal trust responsibility, and strengthening the government-to-government relationships between tribes and EPA. For more than 20 years, EPA has been fulfilling these commitments by providing financial and technical assistance to tribal governments to build capacity in OSWER programs. The OSWER Tribal Strategy provides a basic framework for continuing to fulfill these commitments.

The purpose of the Office of Solid Waste and Emergency Response (OSWER) Tribal Strategy is to communicate a nationwide approach to protecting public health and land resources in Indian country.^{1,2} This Tribal Strategy identifies key OSWER program strategies and activities that EPA believes are particularly important areas of focus and which the Agency intends to support with available technical and financial resources during the next five years.

Priority setting is critical to the success of any environmental program. OSWER programs are guided by the EPA Strategic Plan, the Administrator's Action Plan and OSWER's Action Plan. The OSWER Tribal Strategy will facilitate OSWER's current and future work so that it clearly aligns with EPA's Strategic Plan and OSWER's goals and priorities. The identified strategies and activities do not represent all of the significant work being done in OSWER's tribal program, but are priority areas that are important to focus on over this time period.

The OSWER Tribal Strategy identifies tribal program measures and indicators³ that OSWER intends to use to track progress toward reaching program goals. OSWER intends to report annually on these measures and indicators to better demonstrate progress and results over time, and to build a strong basis for future planning and improvements in environmental performance. An Annual Report on the OSWER Tribal Strategy Measures will be available on OSWER's Web site (www.epa.gov/oswer/tribal) around December of each fiscal year.

Partnership is an important aspect of the OSWER Tribal Strategy. Strengthening partnerships with tribes, and other entities such as federal agencies, EPA offices, and states, can increase environmental accountability, achieve better results, and identify best practices which can be shared across Indian country. For example, to successfully achieve some of the goals and activities outlined in this strategy, OSWER intends to work cooperatively with EPA's tribal

¹ Use of the terms "Indian country," "tribal lands," and "tribal areas" within this document is not intended to provide legal guidance on the scope of any program being described, nor is their use intended to expand or restrict the scope of any such programs, or have any legal effect.

² "Indian country" is defined in 18 U.S.C. Section 1151 as (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." Indian country includes, among other types of land, lands held in trust by the United States for tribes, Indian pueblos, Indian colonies, and rancherias. Under this definition, EPA treats tribal trust lands that have been validly set aside for use by tribes as reservations, and thus, Indian country, even if the trust land has not formally been designated as a reservation.

³ In this document, an "indicator" is a measurement, value, or statistic that provides an approximate gauge of the state of the environment or the effectiveness of an environmental management program.

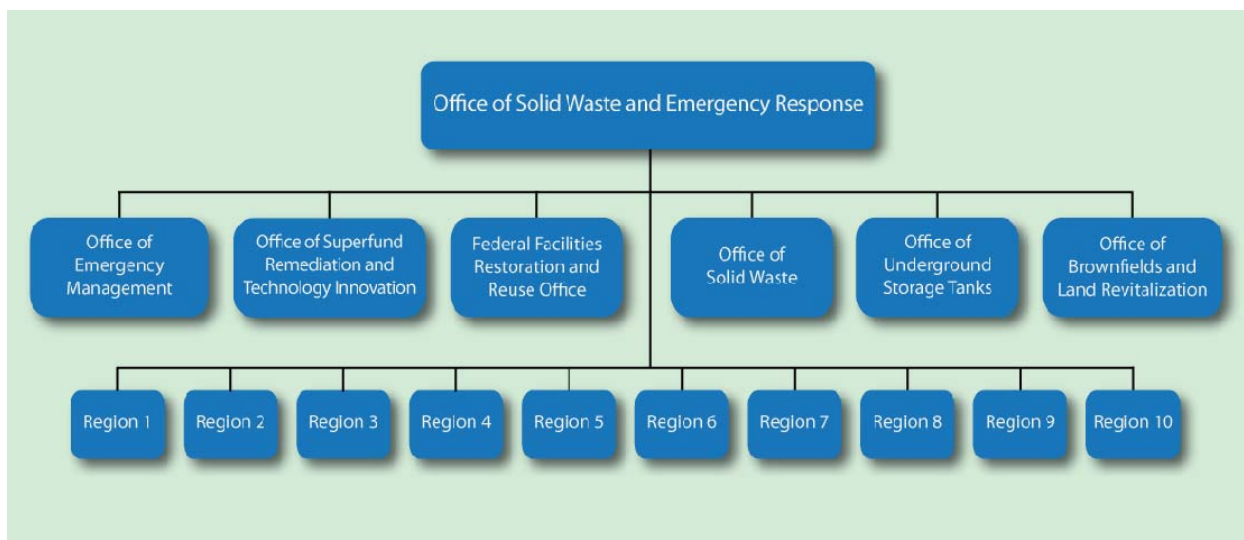
enforcement and compliance program in the Office of Enforcement and Compliance Assurance (OECA). OSWER and OECA have determined that the activities listed in this strategy are also consistent with OECA's National Indian Country Enforcement and Compliance Priority.⁴

The OSWER Tribal Strategy covers the five year period of 2009 – 2014, consistent with the EPA Strategic Plan. However, it is a living document that is open to further refinement as priorities, resources, and circumstances change. OSWER intends to evaluate and refine the OSWER Tribal Strategy, considering available tribal resources and the environmental conditions in Indian country, through an annual OSWER Tribal Strategy forum meeting with regional offices and tribes. In addition, OSWER intends to update this strategy in tandem with the tri-annual public review process for updating EPA's Strategic Plan. In this way, the OSWER Tribal Strategy will continue to stay current with environmental activities in Indian country and clearly align with the EPA Strategic Plan into the future.

II. Overview of OSWER's Programs

OSWER protects public health and the environment by providing policy, guidance and direction on the safe management of wastes; preparing for, preventing and responding to chemical and oil spills, accidents, and emergencies; enhancing homeland security; and cleaning up contaminated property and making it available for reuse. OSWER carries out these missions in partnership with other federal agencies, states, tribes, local governments, communities, nongovernmental organizations, and the private sector. The six program offices within OSWER regularly work with tribes. Each office has a tribal coordinator whose responsibilities include ensuring consistency with policies relating to working with Indian tribes and ensuring that tribes are appropriately included in the offices' activities. The OSWER tribal coordinator is located within the OSWER Immediate Office in the Innovation, Partnerships and Communication Office (IPCO). The primary functions of these OSWER offices, as well as the regional offices are described below. The resources dedicated to tribal work across OSWER's program offices in headquarters are also shown in a chart below. For more information on OSWER's Tribal Program and EPA's Indian Program, please see Appendix A and Appendix B. Information on the environmental statutes that OSWER implements, and how each statute recognizes the status of tribal governmental authority is provided in Appendix C.

⁴ OECA's National Indian country Enforcement and Compliance Priority can be found at: <http://epa.gov/compliance/data/planning/priorities/tribal.html>



Organizational Structure of the Office of Solid Waste and Emergency Response, Including Ties to Regional Offices

OSWER Immediate Office – Innovation, Partnerships and Communication Office (IPCO)
 IPCO supports the Assistant Administrator for OSWER and assists OSWER’s individual program offices with their innovation, partnership, and communication efforts and coordinates the overall OSWER tribal program. The OSWER tribal coordinator resides within IPCO, and helps to ensure that the tribal program is coordinated among OSWER program offices and throughout EPA.

Office of Emergency Management (OEM)

OEM’s overall mission is to provide national leadership to prevent, prepare for, and respond to, health and environmental emergencies, and includes the programs for Superfund emergency response; oil spill prevention, preparedness and response; and chemical emergency preparedness and prevention under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Clean Air Act (CAA), Section 112 (r). Tribes have a similar role as states in the development of chemical emergency preparedness programs under EPCRA. In addition, the CAA provides that eligible tribes may implement provisions of the CAA in a similar manner as states.

Office of Superfund Remediation and Technology Innovation (OSRTI)

OSRTI implements the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) which provides broad authority for federal program response to releases of hazardous substances. CERCLA provides that EPA afford Indian tribes substantially similar treatment as states for certain CERCLA provisions, and work with tribes to identify and respond to Superfund-eligible cleanup needs, enhance tribal participation in the cleanup process at sites impacting tribes, and provide technical assistance for effective cleanup of uncontrolled or abandoned hazardous waste sites.

Federal Facilities Restoration and Reuse Office (FFRRO)

Some currently and formerly owned federal facility sites are contaminated with hazardous substances, ordnance and explosives, radioactive waste, fuels, or other toxic contaminants, and

may be located in or near Indian country. FFRRO works within EPA, as well as with the Department of Defense (DoD), the Department of Energy (DOE), and other federal agencies to support effective participation of tribes at sites of tribal interest, and find protective, creative, and cost-effective cleanup solutions. FFRRO consists of two core components: the Superfund federal facilities response program and the Base Realignment and Closure (BRAC) program.

Office of Solid Waste (OSW)

Under the authority of the Resource Conservation and Recovery Act (RCRA), OSW administers EPA's waste management program for entities that generate, transport, treat, store, and dispose of hazardous waste and promotes pollution prevention and environmentally-sound recycling. In addition, OSW has established criteria for the management of non-hazardous waste, including municipal solid waste. OSW also partners and coordinates with other federal agencies to assist tribes with the management of their solid and hazardous waste by providing technical assistance, funding for assessments of open dumps in Indian country, and developing integrated waste management plans.

Office of Underground Storage Tanks (OUST)

OUST implements the legislative requirements established under RCRA Subtitle I, mandating that EPA regulate certain underground storage tanks (USTs) that contain petroleum or hazardous substances. EPA directly implements the federal UST program in Indian country. In August 2006, OUST finalized an UST Tribal Strategy to implement Section 1529 of the Energy Policy Act of 2005 in coordination with Indian tribes and EPA regional offices. In August 2007, as required by the Energy Policy Act, OUST submitted a report to Congress on the implementation and enforcement of the UST program in Indian country.

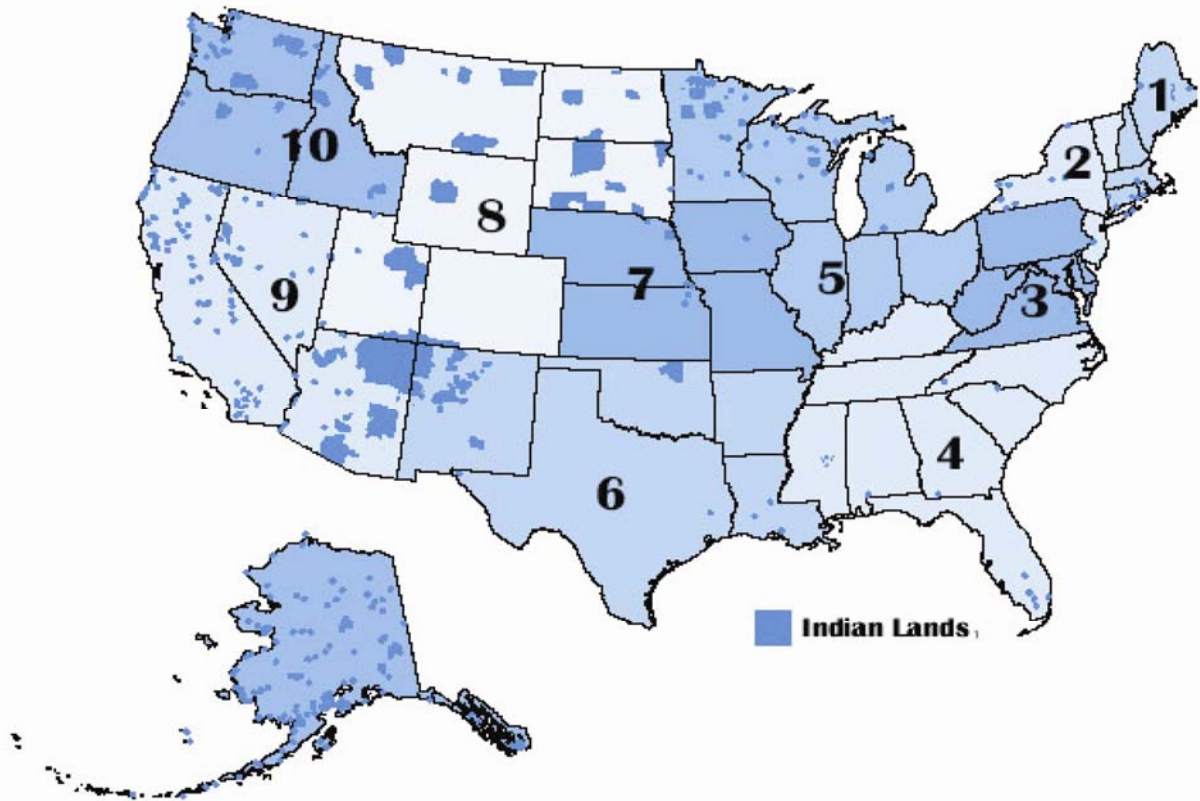
Office of Brownfields & Land Revitalization (OBLR)

OBLR manages the cleanup, redevelopment and revitalization of brownfields under the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). The Brownfields Law authorizes funding for assessment and cleanup of brownfields and for state and tribal response programs.

EPA Regions

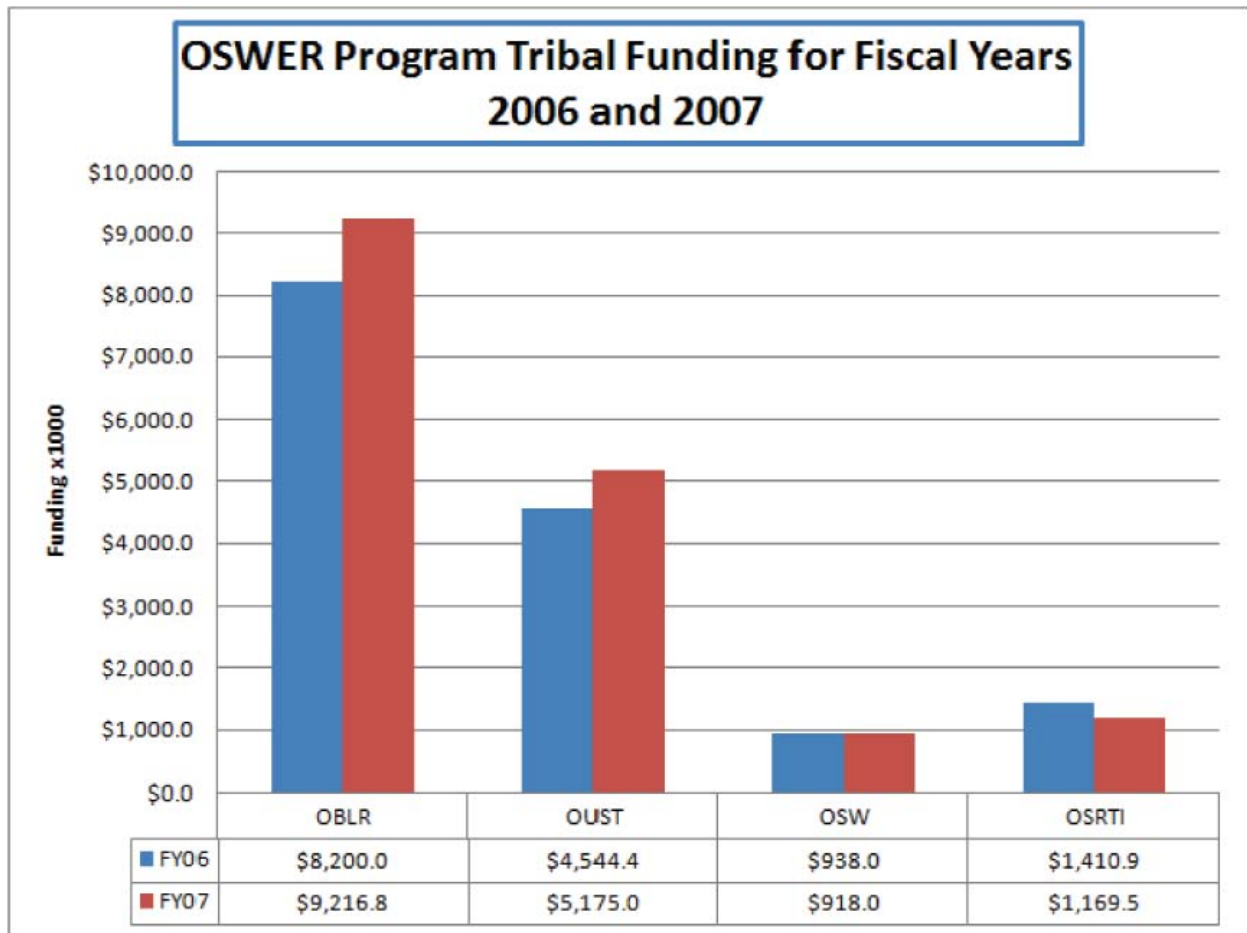
EPA Regions are responsible for the execution of the Agency's programs, and work directly with tribes in carrying out these responsibilities. The regions are the primary means for providing direct funding support and technical assistance to tribal governments. Staff in OSWER's program offices work closely with their counterparts in EPA's regional offices to coordinate policy and program efforts across the country. Each region has specific emphases based on particular environmental problems facing their region and may have their own applicable tribal strategies. The efforts of the regions are critical to the successful implementation of the strategies and activities of the OSWER Tribal Strategy. For more information about EPA regions, see Appendix A.

There are nine EPA regional offices that include federally-recognized Indian tribes. The regions are designated on the map of Indian country below.



Map of Indian Country within EPA Regions 1 through 10⁵

⁵ This map is intended to provide a general understanding of the location of Indian country, but is neither to scale, nor intended as a legal representation.



These numbers are tribal program actual dollars reported by each program office as of Feb. 8, 2008. Note that OEM, FFRRO and IPCO also contribute tribal funding for training and outreach project activities that vary from year to year. The combined total for these activities is about \$200,000 per year.

III. Development of the OSWER Tribal Strategy

The OSWER Tribal Strategy was developed with input from OSWER program staff and managers, regional staff and managers, and tribes. OSWER conducted an extensive background search to ensure that input was obtained from tribes in the initial stages of the draft strategy development. In drafting this initial strategy, OSWER considered all tribal comments received by EPA on the EPA Strategic Plan. OSWER also considered tribal comments received on the OSWER National Program Guidance, and existing tribal program policies, guidance and activities in each OSWER program office. In addition, OSWER used notes from discussions with tribes from OUST, OSRTI, OBLR and OSW tribal program meetings, meeting notes and presentations from the EPA Tribal Operations Committee and Tribal Caucus goal-lead meetings, products from OSWER-supported tribal research grants with the National Tribal Environmental Council and the Tribal Association on Solid Waste and Emergency Response⁶, and summaries of EPA Indian Program Policy Council's meetings with Tribal Caucus representatives. Also represented in this strategy are the components of existing tribal strategies from two OSWER

⁶ This OSWER-supported association was active from 1998 to 2006.

offices: OUST and OSW. The OUST Tribal Strategy is an external document that was developed in consultation with tribes. The OSW Tribal Strategy is an internal document that was developed by EPA regions and headquarters. OSWER has combined the primary elements of these strategies into the OSWER tribal strategy to reflect a complete picture of OSWER's work in Indian country.

After the extensive background work to include the tribal perspective, OSWER went through an internal iterative process with each program (including discussions with regional program staff) to analyze their program activities, identify gaps or redundancies, evaluate funding issues, and identify strategies that more clearly align tribal program activities with the EPA Strategic Plan goals and objectives. As part of this process, OSWER researched EPA tribal program measures and potential sources of information that could support additional ways to track progress towards achieving OSWER goals in Indian country. The results of this effort were reviewed by OSWER Office Directors, EPA Regional offices, and other EPA programs. OSWER received 173 comments and numerous edits. This resulting strategy incorporates edits from the internal EPA review, which OSWER believes has significantly improved the scope and clarity of the final strategy.

As an immediate next step, OSWER sought the review of the draft strategy by federally-recognized Indian tribes. In March 2008, OSWER provided the draft strategy to tribes through three venues: on the EPA Web site at www.epa.gov/oswer/tribal, through email to all available tribal email addresses (including tribal environmental organizations), and by individual mailing to every federally-recognized tribe using an updated address list from the EPA American Indian Environmental Office (AIEO). OSWER accepted comments on the strategy through July 2008. OSWER received comments from 11 tribal reviewers, and responded to their comments in a response to comments document and this tribal strategy.

IV. EPA Strategic Plan⁷, the Administrator's Action Plan, and OSWER's Action Plan

At the conclusion of significant outreach to states, tribes and others, EPA published its Strategic Plan for fiscal years 2006 – 2011. The EPA Strategic Plan includes five major goals:

1. Clean Air and addressing Global Climate Change;
2. Clean and Safe Water;
3. Land Preservation and Restoration;
4. Healthy Communities and Ecosystems; and
5. Compliance and Environmental Stewardship.

OSWER's programs are primarily addressed in Goal 3 and Goal 4. OSWER also manages activities involving RCRA waste minimization, which are represented under Goal 5. While EPA addresses tribal concerns under all of the goals in the EPA Strategic Plan, Goal 5, Objective 5.3, *Improve Human Health and the Environment in Indian Country*, is a specific section of the EPA Strategic plan intended to represent an Agency-wide effort to build tribal capacity, assess

⁷ All references to the EPA Strategic Plan refer to the 2006 – 2011 EPA Strategic Plan. To view the EPA Strategic Plan for 2006 – 2011, go to <http://www.epa.gov/ocfo/plan/plan.htm>.

environmental conditions in Indian country, and implement EPA programs in Indian country. EPA's AIEO is responsible for collecting and managing the tribal-related EPA program data to support the Goal 5.3 performance measures.⁸ AIEO collects this data directly from regional tribal program offices and General Assistance Program (GAP) coordinators on a tribe-by-tribe basis. The EPA Strategic Plan identifies specific, targeted goals to be achieved by the year 2011, and describes strategies for movement toward their attainment. These targets and strategies are intended to apply nationally. The OSWER Tribal Strategy shows how OSWER's tribal priorities align with, and will contribute to, fulfilling the goals and objectives of the EPA Strategic Plan.

EPA has also started to develop the next EPA Strategic Plan, covering the years 2009 – 2014. The *2009-2014 Strategic Plan Change Document* is EPA's initial draft document, and was made available for public review and comment. The *Change Document* can be found at: <http://www.epa.gov/ocfo/plan/plan.htm>.

OSWER Representation in the 2006 – 2011 EPA Strategic Plan

| Goal 3: Land Preservation and Restoration | Goal 4: Healthy Communities and Ecosystems | Goal 5: Compliance and Environmental Stewardship |
|---|--|--|
| Objective 3.1: <u>Preserve Land</u> <ul style="list-style-type: none"> • Hazardous Waste • Municipal Waste • RCRA Facilities • Petroleum Products | Objective 4.1: <u>Chemical, Organism, and Pesticide Risk</u> <ul style="list-style-type: none"> • Risk Management Plans • Local Emergency Planning Committees | Objective 5.1 |
| Objective 3.2: <u>Restore Land</u> <ul style="list-style-type: none"> • Superfund • RCRA • LUST <u>Prepare and Respond to Releases</u> <ul style="list-style-type: none"> • Oil Spills • Emergency Response and Homeland Security Readiness | Objective 4.2: <u>Communities</u> <ul style="list-style-type: none"> • Brownfields | Objective 5.2: <u>Improve Environmental Performance through Pollution Prevention and other Stewardship Practices</u> <ul style="list-style-type: none"> • Reduce priority list chemicals |
| Objective 3.3: <u>Enhance Science and Research</u> | Objective 4.3 | Objective 5.3 |
| | Objective 4.4 | Objective 5.4 |

Within some of the objectives contained in the EPA Strategic Plan, specific, key targets for Indian country are identified. These targets highlight areas in which EPA is emphasizing a priority need for improved tribal conditions. They indicate the types of outcomes that are expected as a result of Agency efforts to promote human health and the environment for tribes. There are two strategic targets in the EPA Strategic Plan related to OSWER's Tribal Program:

⁸ For more information about AIEO, including its functions and relationship to OSWER, please see Appendix A.

1. By 2011, increase by 118 the number of tribes covered by an integrated waste management (IWM) plan compared to FY06. [Baseline: 0⁹; Universe: Number of federally-recognized tribes] (EPA Strategic Plan - Goal 3, Objective 3.1).
2. By 2011, close, clean up, or upgrade 138 open dumps in Indian country and on other tribal lands compared to FY06. [Baseline: 0¹⁰; Universe: IHS w/STARS Database (with updated EPA data elements in FY09)] (EPA Strategic Plan - Goal 3, Objective 3.1).

As part of its efforts to implement the objectives of the EPA Strategic Plan, OSWER has developed a [*Fiscal Year 2009 OSWER National Program Manager \(NPM\)'s Guidance*](#).¹¹ This document identifies OSWER program implementation priorities and milestones for making progress toward the goals and objectives presented in the EPA Strategic Plan. Some of the implementation priorities are the responsibility of EPA headquarters, while others apply to EPA Regions, and/or to tribes.

In addition to the EPA Strategic Plan, OSWER is guided by the EPA [Administrator's Action Plan](#)¹² and the [OSWER Action Plan](#).¹³ The Administrator's Action Plan charges EPA to accelerate the pace of environmental protection by taking actions that produce environmental results and that are accountable to the public. The OSWER Action Plan identifies priorities that OSWER will focus on, including improving data and information quality and accessibility and strengthening partnerships with other federal agencies, states, tribes, local governments and other stakeholders. The OSWER Tribal Strategy incorporates these priorities as key components and will enable OSWER to better demonstrate progress and results for its tribal program.

V. OSWER Tribal Program's Mission, Goals, Strategies, Activities, Measures, and Indicators

Congress has delegated authority to EPA to ensure that environmental programs designed to protect human health and the environment are carried out throughout the United States, including in Indian country. In Indian country, OSWER's mission is to protect human health and the environment consistent with EPA's trust responsibility to tribes and the government-to-government relationship with tribes. This mission may be approached in the following ways:

- By building the tribes' capacity to implement environmental programs and removing barriers for tribal program implementation.
- Through direct implementation of federal laws and programs.

⁹ EPA has established a zero baseline for counting the number of tribes that are covered by an integrated waste management plan because EPA will be looking at all plans, whether existing or under development, to determine whether or not the plans conform to EPA criteria that makes them eligible to count under this measure, as the Agency works with tribes to promote effective integrated waste management planning.

¹⁰ EPA has established a zero baseline as of FY 2006 for counting the number of open dumps in Indian country that have been cleaned up, closed, or upgraded, since this was a new performance measure, starting in FY 2007. Thus the measure counts progress from FY 2007 onward.

¹¹ To view go to: <http://www.epa.gov/cfo/npmguidance/index.htm>

¹² To view go to: <http://www.epa.gov/adminweb/administrator/actionplan.htm>

¹³ To view go to: <http://www.epa.gov/oswer/actionplan/index.htm>

- Through the promotion of partnerships that leverage federal, tribal, state, and community resources and expertise.

These approaches are consistent with EPA's Indian Policy¹⁴ and are critical components of the OSWER Tribal Strategy.

A. Cross-Program Measurement

OSWER is seeking ways to better manage and communicate the collective accomplishments related to cleanup and revitalization in the Brownfields, Superfund, RCRA Corrective Action, Underground Storage Tanks, Federal Facilities Response, and Emergency Response programs. In 2006, OSWER developed [interim guidance](#) on three new cross-program measures. Each program has committed to contribute to these cross-program measures and each program intends to collect and maintain its own program information towards these measures. As program offices determine how they will implement these new cross-program measures, they intend to also identify how to capture this information for Indian country. In this way, revitalization and cleanup efforts in Indian country can be accounted for and measured as a distinct subset of the collective cross-program data.

The three cross-program measures represent a mix of both internal measures and indicators for improved data collection. For purposes of this strategy, and consistent with OSWER guidance, the distinction between performance measures and indicators is that performance measures refer to qualitative or quantitative methods of assessing progress towards achieving goals and objectives, whereas indicators correspond to information that can help give context to performance measures, describe national trends, focus program resources and communicate the impacts and benefits. The three cross-program measures supported by this strategy (*with new tribal-specific language added in italics to indicate that under this strategy, OSWER intends to track these measures as a subset of the OSWER cross-program measures*) are:

- ***Universe Indicator***¹⁵ -- The number of sites and acres being addressed by OSWER cleanup programs (*located in Indian country and Alaska tribal lands*).
- ***Protective for People Measure*** -- Determination that there is no complete pathway for human exposures to unacceptable levels of contamination based on current site conditions (*including sites in Indian country and Alaska tribal lands*).
- ***Ready for Anticipated Use Measure*** -- Determination that cleanup goals have been achieved for the site that may affect current as well as reasonably anticipated future land uses, and institutional controls identified as part of the remedy are in place (*including sites in Indian country and Alaska tribal lands*).

For additional information and definition of these measures, please see OSWER's *Interim Guidance for OSWER Cross-Program Revitalization Measures*, October 18, 2006.

¹⁴ To view go to: <http://www.epa.gov/tribal/basicinfo/index.htm>

¹⁵ The Universe Indicator refers to the number of actual or potentially contaminated or previously contaminated sites and surface acres for which OSWER's cleanup programs have an oversight role for assessment and/or response action. The Universe Indicator does not capture all of the sites or acres of contaminated or potentially contaminated land addressed by non-OSWER EPA programs, other federal agencies, state or local governments, tribal governments and non-government entities.

The cross-program measures section in the OSWER Tribal Strategy will initially serve as a placeholder for future reporting of progress in Indian country. OSWER is currently in the process of completing program-specific guidance for the overall cross-program measures. Once this process is completed, OSWER intends to begin data gathering efforts to be able to report subtotals (i.e., number of sites in Indian country) for the three cross-program measures.

While the cross-program revitalization measures may help to track the environmental results of OSWER's tribal program, it is also important to measure the progress of tribal capacity building. A majority of EPA's work focuses on capacity building because while a number of tribes have established sophisticated environmental programs, many more are at a more fundamental level in building their programs. As discussed below, capacity building is a critical component of the program-specific strategies, activities, measures, and indicators that make up the OSWER Tribal Strategy.

OSWER intends to continue improving how EPA can capture the progress of tribal capacity building. For example, the Brownfields State and Tribal 128(a) Measures Workgroup is currently developing measures to report the establishment, enhancement, and capacity building efforts of CERCLA Section 128(a) State and Tribal Grant recipients. Consideration will be given to how this work could be used across OSWER's programs in future updates of the OSWER Tribal Strategy.

B. Program-Specific Goals, Strategies, Activities and Measures

The following sections describe the long-term goals and priorities for each OSWER program and the specific strategies and activities that each program intends to focus on over the next five years to achieve these goals. Measures are identified for each program that could be used to report and demonstrate progress toward meeting specific targets. Other indicators are also identified that can be used to track trends in EPA's tribal program. Each section includes the applicable elements of the EPA Strategic Plan for that program to highlight the connection between the OSWER Tribal Strategy and the EPA Strategic Plan.

OSWER recognizes that there may be opportunities to leverage and integrate tribal activities across related OSWER programs (similar approaches, same sites, etc.). OSWER intends to explore and coordinate cross-program opportunities such as tribal training approaches, data quality and management, site response actions, and grant and contract activities. OSWER intends to develop a more formal process to find and address these potential opportunities to gain maximum efficiency and effectiveness of the program.

**EPA Strategic Plan –
Applicable Elements**

Goal 3 - Land Preservation and Restoration: Preserve and restore the land by using innovative waste management practices and cleaning up contaminated properties to reduce risks posed by releases of harmful substances.

Goal 4 - Healthy Communities and Ecosystems, Objective 4.1: Protect human health, communities, and the environment from chemical releases through facility risk-reduction efforts and building community preparedness and response capabilities.

Objective 4.2.3: Working with state, tribal and local partners to promote the assessment, cleanup and sustainable reuse of Brownfields properties.

Goal 5 - Compliance and Environmental Stewardship, Objective 5.2: Improve environmental performance through pollution prevention and other stewardship practices.

Objective 5.3: Improve human health and the environment in Indian country and help federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

1. OSWER-wide (IPCO)

Desired Outcomes (Long-term Goals):

To support and provide direction for OSWER’s Indian program, enhance outreach efforts with tribes on environmental protection in Indian country, and maintain consistency with EPA’s Indian Policy.

Strategies to Achieve these Outcomes (Shorter-term Goals):

Ensure appropriate consultation and communication with tribes in all OSWER programs. OSWER intends to ensure that tribes are engaged in policy discussions as early as practicable and that tribal concerns are considered and incorporated, when appropriate, as EPA develops and implements national policies and decisions.

Build tribal capacity. OSWER provides support through training, financial support, and technical assistance to tribes to build capacity in assuming regulatory and program management responsibilities. Additionally, OSWER develops guidance and provides for research in cooperation with tribes to clarify key issues and/or obtain relevant information for addressing issues potentially affecting tribal health and the environment.

Facilitate communication, coordination and cooperation within EPA on tribal issues and cultural awareness. OSWER intends to actively seek opportunities to: (1) leverage efforts among OSWER programs to increase EPA productivity; (2) align OSWER priorities and actions to ensure a consistent message and direction across OSWER’s tribal program and minimize burdens on tribes; (3) promote awareness and understanding of tribal cultural diversity as part of meeting EPA’s Strategic Plan goals; (4) engage in information sharing with the appropriate EPA groups and tribes in a timely manner; (5) provide tribal cross-program data analysis and program recommendations to EPA; (6) represent OSWER on agency workgroups, such as the Indian Program Policy Council (IPPC) and the National Indian Workgroup (NIWG); and (7) act as a conduit for tribal issues with EPA senior managers.

Activities to Implement these Strategies:

Establish OSWER Tribal Framework. OSWER intends to establish a tribal framework that will enhance dialogue among tribes, tribal leaders, OSWER managers, EPA Regions, and other federal representatives on OSWER program policy matters. The framework would also promote information exchange on OSWER program actions, encourage cross-program efficiencies, facilitate capacity building of tribal waste, source reduction and recycling programs, and continue to improve and refine tribal program

measurement in OSWER programs. OSWER envisions that the framework would enable EPA to interact with a broad range of tribal professionals with direct experience in OSWER program areas on a regular basis, and share detailed input and results with broader agency tribal groups such as the National Tribal Operations Committee (NTOC). An OSWER tribal framework may include an annual forum meeting on the OSWER Tribal Strategy to provide a two-way avenue for action, dialog, listening and training with tribes to maintain the strategy as a dynamic living document.

Include the Regional Tribal Operations Committees (RTOCs) as a regular component of communication strategies for OSWER tribal topics. OSWER continues to communicate directly with tribal governments and other groups, such as the NTOC, but intends to increase its communication with tribes through direct interaction with the RTOCs and regions.

Increase headquarters' participation in regional tribal meetings. Attending regional meetings with tribes (e.g., annual tribal meetings, tribal summits, and RTOC meetings) should enhance headquarters' understanding of local issues facing tribes and provide opportunities for increased communication between headquarters, the regions, and tribes. OSWER headquarters program representatives intend to proactively participate in such meetings, and provide presentations and other information, as appropriate.

Establish and maintain an OSWER Tribal Programs Web site. In June 2007, OSWER developed an OSWER tribal Web page with links to relevant guidance and information for tribes, including links to OSWER program Web sites, contact information, funding opportunities, etc. (<http://www.epa.gov/oswer/tribal>).

Coordinate outreach planning and explore ways to measure the effectiveness of EPA's outreach, consultation, and communication efforts with Tribes. OSWER intends to evaluate its current efforts to reach out to tribes and identify opportunities to integrate and better coordinate its outreach efforts across programs. In addition, OSWER intends to find ways to measure the effectiveness of OSWER communication activities, both at the regional and national level, and considering both EPA and tribal perspectives.

Identify opportunities across OSWER's programs to increase the use of Direct Implementation Tribal Cooperative Agreements (DITCAs) and improve the quality of service by circuit riders, as appropriate¹⁶. DITCAs allow tribes to engage in programmatic work under federal authority to help EPA implement a program in Indian country. DITCAs may be an effective tool to allow EPA to partner with tribes and provide tribes the opportunity to develop staff capacity and expertise in a program at their own pace, while at the same time helping EPA to meet Strategic Plan goals and measures, and its mission in Indian country. A circuit rider approach establishes an agreement with a tribe to develop specific expertise that is shared with several other tribes. Past use of DITCAs and circuit riders has been limited, and OSWER intends to evaluate ways to encourage the use, and improve the effectiveness of DITCAs and circuit riders in its programs.

¹⁶ The term "circuit riders" refers to senior environmental employees (SEE) employees that EPA hires through a grant to Senior Service to America, Inc. to provide technical assistance to tribes directly by traveling into Indian country and meeting with tribes face-to-face. Circuit riders enable EPA to work more closely with tribes on the ground.

The effort would include tribal consultation on effective DITCA approaches, increased education to EPA and tribes on the intent and goals of DITCAs and circuit riders, analyzing results from other EPA DITCA and circuit rider activities, evaluating financial options, and working with the Senior Service of America, Inc. to market EPA circuit rider positions to well-qualified applicants.

Promote opportunities for raising cultural awareness within OSWER. OSWER intends to encourage all staff and managers to participate in the Working Effectively with Tribal Governments (WETG) training (available through the internet or in the classroom). OSWER is exploring the possibility of adding the WETG training course into the OSWER diversity training curriculum for EPA employees. OSWER intends to sponsor WETG training during Native American Heritage Month each November, as well as organize other events to raise cultural awareness. OSWER intends to encourage its managers and staff to plan visits to tribal programs on tribal land in conjunction with travel to regional meetings, where feasible.

Increase the level of understanding of the concept of risk and clarify EPA's approach to risk in Indian country. OSWER may propose a risk training course that evaluates the concept of risk and examines some of the different ways people look at or perceive risk. OSWER intends to investigate potential tools that may provide a progression of understanding risk and how to make it work better among tribes and EPA to achieve improved environmental protection and community welfare. OSWER also communicates and coordinates risk efforts across EPA (e.g., EPA-Tribal Science Council) and at non-EPA venues.

Improve OSWER tribal data systems. Facilitate the collection of better data on activities, outputs, and outcomes in Indian country for all OSWER programs. Ensure that codes used to delineate tribal data exist and establish program-specific guidance for regions so that fields are populated consistently.

Ensure that tribes are able to provide ongoing input into OSWER's policies to consider climate change effects, so that long term investments take into account changing factors and possible adaptations to protect human health and the environment in Indian country. As legislators and EPA begin to craft national climate change policy, it is important to fully understand and consider the impact on Native American communities and their traditional values and culture, particularly as EPA invests in cleanup and waste management programs in Indian country.

Indicators to Track:

- Number of OSWER staff trained.
- Number of hits on OSWER's Tribal Programs Web site and the number of inquiries from the Web site.
- Number of DITCAs involving an OSWER program in EPA.

**EPA Strategic Plan –
Applicable Elements**

Goal 3 - Land Preservation and Restoration: Preserve and restore the land by using innovative waste management practices and cleaning up contaminated properties to reduce risks posed by releases of harmful substances.

Objective 3.1 - Preserve Land: Reduce adverse effects to land by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products at facilities in ways that prevent releases.

Objective 3.2 - Restore Land: Control the risks to human health and the environment by mitigating the impact of accidental or intentional releases and by cleaning up and restoring contaminated sites or properties to appropriate levels.

Goal 5 - Compliance and Environmental Stewardship

Objective 5.3 - Improve Human Health and the Environment in Indian Country: Protect human health and the environment on tribal lands by assisting federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

2. Solid and Hazardous Waste

Desired Environmental Outcomes (Long-term Goals):

Land, water, and air are protected from the improper disposal and/or improper management of solid and hazardous waste in Indian country.

Improved waste management practices in Indian country begin with successful and stable integrated waste management programs. Waste management priorities in Indian country identified by tribes include:

- closing, cleaning up, or upgrading open dumps;
- developing and implementing integrated waste management plans;
- preventing illegal dumping;
- eliminating backyard burning;
- guidance on successful and sustainable methods for waste program operation and maintenance;
- technical assistance to implement solid waste reduction, collection, recycling and disposal programs;
- technical assistance for the proper disposal of medical waste;
- technical assistance for the proper disposal of household hazardous waste;
- technical assistance for the proper disposal of construction and demolition waste;
- capacity building to regulate hazardous waste handlers; and
- technical assistance to develop and implement self-sustaining integrated waste management programs.

Many tribes are facing challenges in addressing these issues because of underlying causes such as limited resources for solid waste management and cleanup, differing authorities and missions relating to solid waste among federal agencies, remoteness and size of tribal communities that inhibit economies of scale, undeveloped tribal enforcement capabilities, and competing tribal priorities.

OSW can provide technical assistance to tribes to help address these issues within a tribe’s integrated waste management program that is tailored to fit particular tribal needs.

OSW is focusing on the following priority areas to improve waste management and disposal practices in Indian country by helping tribes achieve sustainable waste management programs:

- development of integrated waste management plans (IWMPs)
- support closing, cleaning up, or upgrading¹⁷ open dumps in Indian country and other tribal lands

OSW and EPA’s Regional offices with solid and hazardous waste responsibilities developed an internal document, *OSW/Regional Tribal Integrated Waste Management (IWM) Strategy*, that lays out a plan to coordinate efforts within the various EPA tribal waste programs and to strengthen federal agency partnerships to take a more holistic approach to waste management. This document is consistent with the goals, strategies, and activities in the OSWER Tribal Strategy and contains additional details that support the implementation of both strategies.

Strategies to Achieve these Outcomes (Shorter-term Goals):

Build tribal capacity to increase the number of tribes covered by an integrated waste management plan. Planning is the first step in designing or improving an integrated waste management program — allowing a tribe to take institutional, social, financial, economic, technical and environmental factors into consideration. Through the increased development and implementation of integrated and sustainable waste management plans, residents in Indian country can achieve a waste management program that is optimized to meet their community needs, resulting in more waste minimization and recycling, and less waste being disposed of in open dumps and by open burning.

Enhance partnerships to close, clean up, or upgrade open dumps. OSWER is working with other EPA programs, non-federal tribal associations, and federal agencies to leverage funding and take cooperative action to close, clean up, or upgrade open dumps. OSWER believes that a federal partnership is important because EPA and federal agencies conduct (and support through funding) many different types of activities relating to solid waste management in Indian country. By working cooperatively with other EPA programs¹⁸ and federal agencies,¹⁹ OSWER can help facilitate a coordinated program approach so that federal resources are provided in a way that maximizes environmental results. Similarly, partnerships with non-federal entities such as tribal associations on solid waste management can help EPA and tribes achieve environmental results.

Fulfill direct implementation responsibility for RCRA Subtitle C, hazardous waste. EPA intends to further advance its knowledge of hazardous waste issues in Indian country and increase the compliance rates of hazardous waste facilities in Indian country through compliance assistance and inspections.

Activities to Implement these Strategies:

Strengthen federal agency partnerships on solid waste management. EPA facilitates the Tribal Solid Waste Interagency Workgroup to leverage broader federal attention and funding. This workgroup manages the Tribal Solid Waste Management Assistance Project and includes

¹⁷ Upgrade an open dump means: “to meet 40 CFR Part 258 standards.”

¹⁸ Such as the Office of Environmental Compliance and Assistance (OECA) and the Office of Prevention, Pesticides and Toxic Substances (OPPTS).

¹⁹ Such as the Department of Health and Human Services’ Indian Health Service (IHS) and Housing and Urban Development (HUD), Department of the Interior’s Bureau of Indian Affairs (BIA), Department of Agriculture (USDA), and the Department of Defense (DoD).

representatives from EPA, the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the U.S. Department of Agriculture, Rural Development (RD); the U.S. Department of Housing and Urban Development (HUD); and the U.S. Department of Defense (DoD).

OSWER convened a senior management-level meeting with BIA, IHS, RD, HUD, and DoD in the fall of 2007 to further develop these federal agency partnerships on solid waste issues. This group agreed to establish an on-going senior-level Interagency Steering Committee to guide the Tribal Solid Waste Interagency Workgroup activities, and coordinate with other EPA inter-agency efforts. The Steering Committee's goal is to provide additional cooperation, coordination, and accountability for tribal solid waste activities among responsible federal agencies both at headquarters and throughout the regions.

Continue to provide funding to tribes through the Tribal Solid Waste Management Assistance Project that is managed through the Tribal Solid Waste Interagency Workgroup. This project funds tribes to:

- characterize/assess open dumps;
- develop integrated solid waste management plans and codes and regulations;
- develop and implement alternative solid waste management activities/facilities (including equipment acquisition); and
- develop and implement cleanup, closure, and post-closure programs for open dump waste sites in Indian country.

Work with IHS, Division of Sanitation Facilities Construction (DFSC), to update the Web Sanitation Tracking and Reporting System (w/STARS), specifically the Operation and Maintenance Data System (OMDS) database. IHS and EPA are currently using this database to collect, update, and track information on the status of open dumps in Indian country. This database tracks the open dump performance measure.

Support integrated waste management training. OSW has identified existing solid waste training venues and evaluated options for supporting tribal training on solid and hazardous waste management in Indian country. Training courses will be held in the near future.

Promote the use of circuit riders to assist with program implementation and technical assistance. Circuit riders are important for EPA to provide on-the-ground support. Existing use of circuit riders has proven to be cost effective.

Promote current topics on pollution prevention and resource conservation, and innovative practices in Indian country. OSW intends to more aggressively seek the involvement of tribes in voluntary programs such as the Resource Conservation Challenge, and market the successes of the OSWER innovations projects with tribes.

Continue to provide funding to tribes through tribal hazardous waste grants. These grants support projects to develop and implement hazardous waste management programs, including the development of integrated waste management plans.

Update the inventory of hazardous waste facilities in Indian country. The inventory would be used to fill potential gaps in EPA’s understanding of the universe of Treatment, Storage and Disposal Facilities (TSDFs), Large Quantity Generators (LQGs), and Small Quantity Generators in Indian country. EPA plans to continue updating and verifying RCRA Info data, flagging Indian country facilities with an appropriate identifier, and discovering new TSDFs and LQGs.

Performance Measures:

| 2006 – 2011 EPA Strategic Plan Strategic Targets and (External Measures) | | 2007 – 2011 Targets |
|---|---|----------------------------|
| Goal 3.1.2 | By 2011, increase by 118 the number of tribes covered by an integrated waste management plan. | 118 |
| Goal 3.1.2 | By 2011, close, clean up, or upgrade 138 open dumps in Indian country and other tribal lands. | 138 |

**EPA Strategic Plan –
Applicable Elements**

Goal 3 - Land Preservation and Restoration: Preserve and restore the land by using innovative waste management practices and cleaning up contaminated properties to reduce risks posed by releases of harmful substances.

Objective 3.2 - Restore Land, Subobjective 3.2.2 - Clean Up and Revitalize Contaminated Land: Control the risks to human health and the environment at contaminated properties or sites through cleanup, stabilization, or other action, and make land available for reuse.

Goal 5 - Compliance and Environmental Stewardship

Objective 5.3 - Improve Human Health and the Environment in Indian Country: Protect human health and the environment on tribal lands by assisting federally recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

3. Superfund

Desired Environmental Outcomes (Long-term Goals):

Land and water are protected by cleaning up hazardous waste sites impacting Indian country.

Tribal communities living near Superfund sites, both private and federally-owned, often have concerns for their health and about environmental impacts to their communities from nearby site contamination. In some cases, tribes have changed their traditional and subsistence activities due to perceived or real impacts from Superfund sites.²⁰ One mechanism to address these concerns is to optimize tribal participation in the Superfund process.

EPA’s Superfund remedial authority provides for tribal participation in two important ways. First, CERCLA Section 126 provides that EPA afford Indian tribes substantially the same treatment as states for specified activities, including notification of releases, consultation on remedial actions, access to information, and roles and responsibilities under the National Contingency Plan. Second, CERCLA authorizes EPA to enter into cooperative agreements directly with tribes to perform or participate in Superfund site response activities.

Using CERCLA authorities, the tribal priorities of EPA’s Superfund Remedial office are:

- to improve data integrity, collection, quality control and quality assurance on Superfund sites in Indian country;
- to provide, within available resources, opportunities to increase involvement of tribes in the Superfund Remedial program;
- to enhance tribal participation and leadership in the implementation of cleanup activities at Superfund sites impacting tribes; and
- to provide tribally-appropriate guidance and technical assistance.

Superfund is a federal program that EPA, often working with a state or another federal agency, is ultimately responsible for implementing. Incorporating the views and concerns of tribal governments throughout the Superfund response process should

help to bring about more effective implementation and collaboration on actions that are beneficial to improving public health and the environment in Indian country.

²⁰ [A Summary of Results from the 2004 Tribal Hazardous Waste Sites Project developed by Zender Environmental Science and Planning Services, TASWER, 2004.](#)

Strategies to Achieve These Outcomes (Shorter-term Goals):

Assess potential CERCLA sites and continue to clean up National Priorities List (NPL) sites impacting Indian country.

Enhance involvement of tribes in the Superfund Remedial process. EPA intends to: improve relationships through consulting with tribes early in the process, considering and, to the extent practicable and legally permissible, integrating tribal perspectives into the structure of the Superfund Remedial program; gain a better understanding of Superfund issues in Indian country; and facilitate a tribal role at Superfund sites impacting tribal lands where appropriate.

Activities to Implement These Strategies:

Complete assessments of sites in CERCLA tribal sites inventory. EPA worked with tribes to identify hazardous waste sites in or impacting Indian country. Approximately 75 sites were identified by tribes as a result of the CERCLA tribal sites survey. EPA has examined these sites. None of the sites identified in the survey have required new Superfund cleanup activities. Seventy of them were referred to other EPA programs (such as the solid waste, water or oil programs), were already being addressed by Superfund, or have been evaluated and been determined to pose no risk requiring a response action under Superfund. The other five remain to be assessed and the Superfund Remedial Program plans to complete assessments on these sites as priorities permit.

Continue to support tribal involvement and tribal capacity building through Superfund cooperative agreements. EPA enters into cooperative agreements with tribes to perform or participate in Superfund site response activities. EPA revised the regulations that govern the award of cooperative agreements and Superfund contracts to tribes under [CERCLA \(40 CFR Part 35, Subpart O\)](#) to reduce the burden on tribes. These revisions were published in the *Federal Register* on May 2, 2007.

Implement concepts from the Consulting with Indian Tribal Governments at Superfund Sites booklet. OSRTI finalized a booklet in November 2006 that identifies consultation procedures for use by EPA Superfund program staff when they are working with tribes. This booklet is available at <http://www.epa.gov/superfund/partners/osrti/stsi.htm>. OSRTI intends to assist the regional offices in implementing the concepts of the booklet, as appropriate, to improve EPA's government-to-government consultation efforts.

Improve consideration of tribal lifeways at appropriate sites by utilizing the Hazard Ranking System (HRS) guidance. OSRTI has been working with tribes and regions to identify ways in which the HRS guidance can provide examples to better reflect tribal cultural impacts into the characterization of risks from contaminated sites. This guidance was finalized on March 20, 2007, and is available at <http://www.epa.gov/superfund/partners/osrti/stsi.htm>.

Continue to share information among EPA Regions about ways to improve the effectiveness of EPA's tribal efforts. Some EPA Regions have developed effective methods, principles, and tools for working with tribes during the Superfund Remedial process. These experiences are shared with other Regions through the Superfund Tribal Forum. The Superfund Tribal Forum is a

monthly conference call that gives regional and headquarters staff an opportunity to discuss tribal Superfund issues.

OSWER will discuss the effectiveness of these activities in enhancing tribal involvement with the Superfund Remedial process and ways of building upon these initial efforts with tribes at meetings and with EPA Regions on regular NPL, tribal forum and cooperative agreement calls.

Indicator to Track:

- Number of tribes supported by a Superfund cooperative agreement and type of cooperative agreements used.²¹

²¹ Note: This indicator will only include tribes that are awarded direct Superfund cooperative agreement funding. It does not capture tribes that may gain active involvement at a site because of their capabilities funded under another program, such as GAP or Brownfields. In addition it does not capture tribes that may be involved through funding support from Potentially Responsible Party (ies) (PRPs).

**EPA Strategic Plan –
Applicable Elements**

**Goal 4 - Healthy
Communities and
Ecosystems:**

Protect, sustain, or restore the health of people, communities, and ecosystems using integrated and comprehensive approaches and partnerships.

**Objective 4.2 –
Communities,
Subobjective 4.2.3 -
Assess and Clean up
Brownfields:**

Working with state, tribal and local partners, to promote the assessment, cleanup, and sustainable reuse of Brownfields properties.

**Goal 5 - Compliance and
Environmental
Stewardship, Objective 5.3
- Improve Human Health
and the Environment in
Indian Country:**

Protect human health and the environment on tribal lands by assisting federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

4. Brownfields

Desired Environmental Outcomes (Long-term Goals):

Contaminated properties are assessed and cleaned up and available for reuse in Indian country.

Many contaminated sites in Indian country are a result of past activities of federal or tribal entities or other enterprises that have long been abandoned. The Brownfields program, through brownfields grants, enables tribal communities to establish and enhance tribal response programs, assess and cleanup contaminated properties, and return the areas to uses that meet tribal needs.

OBLR’s Brownfields program promotes community involvement with public and private partners in the revitalization of contaminated sites in Indian country and other tribal areas to the highest and best use. Decisions on future uses are determined by tribal priorities and needs. The support for cleanup and revitalization can help tribes achieve reuse of contaminated properties and increase environmental and economic benefits in Indian country.

Strategies to Achieve these Outcomes (Shorter-term Goals):

Build tribal capacity through grants. Brownfields grants are a key component of EPA’s Brownfields program. These grants support revitalization efforts by funding environmental assessment, cleanup, and job training activities, as well as tribal response program capacity building.

Build tribal capacity through relationship building, training, technical assistance and increased communication. Continue to build relationships with tribes and other partners and improve opportunities for tribes to engage with EPA on brownfields issues.

Activities to Implement these Strategies:

Continue to provide funding to tribes through section 128(a) grants for tribal response programs and 104(k) competitive grants for assessment; revolving loan fund; cleanup; job

training; and research, training and technical assistance, subject to the availability of funds.

Continue regional Targeted Brownfields Assessments of sites identified by tribes, upon request by tribes, as resources allow.

Provide funding and technical assistance over a three-year project period to support the development of a train-the-trainer program for tribal response programs. OBLR awarded a

grant in 2007 to develop a train-the-trainer program for tribal governments who have received CERCLA 128(a) funding to establish and enhance tribal response programs. The train-the-trainer program is intended to train tribal representatives on how to effectively develop, manage, and administer a response program for brownfields assessment, cleanup, and redevelopment activities in Indian country.

Provide funding and technical assistance over a three-year project period to support the development of a train-the-trainer program for assessment and cleanup of methamphetamine contaminated Brownfields sites in Indian country. OBLR awarded a grant in 2007 to develop a train-the-trainer program focused on the assessment and cleanup of methamphetamine contaminated brownfields sites in Indian country. The train-the-trainer educational program is intended to inform and train tribal delegates and environmental representatives to understand the processes necessary to recognize, assess, and clean up methamphetamine-contaminated sites; estimate costs of these procedures; secure methamphetamine cleanup contractors; and understand the public health risks associated with methamphetamine labs and the contamination left behind from methamphetamine production.

Improve support for tribal participation and achievement in Brownfields. EPA intends to begin planning earlier for the tribal sessions at the Brownfields conference (possibly hold a mid-year meeting to kick off the planning). EPA also intends to take advantage of other venues, such as the National Tribal Conference on Environmental Management, to provide opportunities for tribes to learn about brownfields. Regions intend to continue providing tribal grantees with direct technical assistance to develop and enhance their response programs, and conducting tribal brownfields workshops to help tribes learn from one another.

Provide assistance to tribes to improve their capacity to apply for funding. OBLR intends to seek opportunities to discuss this topic with tribes (e.g., have a session at the Brownfields conference) and Regions intend to continue having a presence in Indian country to help tribes understand Brownfields grants and provide grant proposal-writing training for tribes.

Continue to work with the State, Tribal and EPA 128(a) Phase III Measures Workgroup. OBLR continues to work with its state and tribal counterparts to develop measures for program accountability. OSWER intends to utilize information from this workgroup to potentially develop an additional tribal indicator for the Brownfields program and other OSWER programs in future updates of the OSWER Tribal Strategy.

Provide technical assistance on the All Appropriate Inquiries (AAI) Rule.

OBLR and the Regions intend to continue outreach to tribes on the AAI rule, and consider working with federal partners, such as the Department of the Interior (DOI), to seek further opportunities to support tribes in implementing this rule.

Performance Measures:

| FY 08 OSWER National Program Manager's Guidance National Target | | Target |
|--|---|---------------|
| Goal 4.2.3 | Number of tribes supported by Brownfields cooperative agreements. | No Target |

Indicators:

- Provide breakdown of the number of tribes awarded brownfields cooperative agreements into: the number of 128(a) tribal response program cooperative agreements (to indicate the number of tribes developing response program capacity), and the number 104(k) competitive cooperative agreements (to indicate the number of tribes successfully competing for site activity funding, and changes of activities over time, in comparison to changes in the number of tribes with response programs).

Placeholder for Future Indicator to Track:

- Develop an indicator based on the results of the Brownfields State, Tribal and EPA 128(a) Phase III Measures Workgroup.

**EPA Strategic Plan –
Applicable Elements**

Goal 3 - Land Preservation and Restoration: Preserve and restore the land by using innovative waste management practices and cleaning up contaminated properties to reduce risks posed by releases of harmful substances.

Objective 3.1 - Preserve Land: Reduce adverse effects to land by reducing waste generation, increasing recycling, and ensuring proper management of waste and petroleum products at facilities in ways that prevent releases.

Objective 3.2 - Restore Land: Control the risks to human health and the environment by mitigating the impact of accidental or intentional releases and by cleaning up and restoring contaminated sites or properties to appropriate levels.

Goal 5 - Compliance and Environmental Stewardship

Objective 5.3 - Improve Human Health and the Environment in Indian Country: Protect human health and the environment on tribal lands by assisting federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

5. Underground Storage Tanks (USTs)

Desired Environmental Outcomes (Long-term Goals):

Land and water are protected from underground storage tank releases in Indian country.

EPA directly implements the underground storage tank program in Indian country. Tribes also play a significant role in helping to prevent and clean up UST releases.

In August 2006, EPA published an UST-specific tribal strategy in response to a mandate in the Energy Policy Act of 2005. *The UST Tribal Strategy* is available at:

http://www.epa.gov/oust/fedlaws/final_ts.htm. That strategy outlines key issues and actions to strengthen the relationships between EPA and tribes, improve information sharing, enhance tribal capacity, and further the cleanup and compliance of USTs in Indian country. This OSWER Tribal Strategy incorporates the elements of the August 2006 UST Tribal Strategy, and links them to OSWER’s strategic goals and cross-program tribal strategies.

Also, in August 2007, EPA submitted a report to Congress on the implementation and enforcement of the UST program in Indian country. The report discusses the progress EPA and tribes have made, working together, to prevent and clean up releases from USTs in Indian country as well as the work remaining to be accomplished in the future. *The Report to Congress on Implementing the UST Program in Indian Country* is available at: http://www.epa.gov/oust/fedlaws/final_trtc.htm.

Strategies to Achieve these Outcomes (Shorter-term Goals):

Continue Leaking Underground Storage Tank (LUST) cleanup work in Indian country. EPA intends to continue to support tank cleanup efforts in Indian country in order to restore and protect groundwater resources and create a safe environment for those who live or work around these sites.

Build tribal UST program capacity. While EPA cannot delegate the federal UST program to tribes, the Agency recognizes that enhancing tribal capacity to develop UST programs is an important component to protecting human health and the environment from UST releases in Indian country.

Continue to increase compliance rates in Indian country for UST leak prevention and release detection requirements. Over the past several years, compliance rates in Indian country have

improved. Currently, compliance rates in Indian country are slightly lower than the national average (In 2006, 59 percent of active tanks in Indian country met all requirements, compared to 62 percent nationally).

Activities to Implement these Strategies:

Continue dialogue with tribes regarding the implementation of the UST Tribal Strategy.

The UST Tribal Strategy lays out the types of work that EPA intends to conduct to encourage greater opportunities for tribal involvement and enhance tribal UST programs, such as providing training, providing resources through grants, authorizing tribal inspectors to conduct inspections on behalf of EPA, as appropriate, and developing DITCAs. EPA plans to continue to work with tribes toward achieving the objectives laid out in the UST Tribal Strategy and to strengthen communication, collaboration, and partnerships with tribal UST programs.

Inspect every UST in Indian country at least once every three years to determine compliance.

EPA has worked with tribes to conduct onsite compliance inspections of all USTs that have not undergone an inspection since December 22, 1998 and has met the August 8, 2007 inspection deadline for nearly all of these USTs in Indian country. EPA (and tribes, as appropriate), intends to continue to conduct onsite inspections of all active USTs in Indian country at least once every three years, which is consistent with the Energy Policy Act. There are currently about 2,600 active federally-regulated USTs in Indian country.

Continue to provide assistance to tribes and UST owners and operators regarding release detection and prevention requirements. EPA provides compliance training and technical assistance to tribes and UST owners and operators to increase their understanding of UST requirements and improve the maintenance and monitoring of USTs in Indian country. EPA intends to continue working with tribes and UST owners and operators to enhance available training opportunities.

Continue to allocate part of EPA's LUST trust fund appropriation for LUST cleanup activities in Indian country and provide technical assistance to tribes regarding LUST releases and cleanups. Each year, EPA allocates part of its LUST Trust Fund appropriation for tribes to assess and clean up USTs in Indian country. EPA strives to continue to reduce the backlog of releases where cleanup has not yet been completed. As mandated by the Energy Policy Act of 2005, EPA gives cleanup priority to those releases presenting the greatest threat to human health or the environment. EPA will also continue to take into account the traditional and cultural value of tribal lands when conducting cleanups.

Continue to provide funding to tribes for building environmental management capacity and for managing tribal UST programs. OUST has taken steps to improve the regional grant allocation process to ensure the process is more transparent. EPA intends to continue providing information to tribes regarding funding sources and the types of eligible projects, and working collaboratively with tribes to identify potential projects.

Performance Measures:

| | | Targets | | | | |
|--|--|---------|-----|-----|-------|-----|
| | | '07 | '08 | '09 | '10 | '11 |
| Goal 3.1.2 | Percentage of UST facilities in Indian country that are in significant operational compliance with both release detection and release prevention (spill, overfill, and corrosion protection) requirements. | 67% | 68% | 65% | 65.5% | 66% |
| FY 08 OSWER National Program Manager's Guidance National Target | | | | | | |
| Goal 3.2.2 | The number of LUST cleanups in Indian country that meet risk-based standards for human exposure and groundwater migration (tracked as the number of LUST cleanups completed). | 30 | 30 | 30 | 30 | 30 |

Other Indicators to Track:

- Total number of tribal staff trained on development and implementation of an UST program.
- Number of federal inspector credentials issued to tribes to conduct federal UST compliance inspections.

**EPA Strategic Plan –
Applicable Elements**

Goal 3 - Land Preservation and Restoration, Objective 3.2 - Restore Land, Subobjective 3.2.1 - Prepare for and Respond to Accidental and Intentional Releases: Reduce and control the risks posed by accidental and intentional releases of harmful substances by improving our nation's capability to prevent, prepare for, and respond more effectively to these emergencies.

Goal 4 - Healthy Communities and Ecosystems, Objective 4.1 - Chemical, Organism, and Pesticide Risks, Subobjective 4.1.2 - Reduce Chemical Risks at Facilities and in Communities: Protect human health, communities, and the environment from chemical releases through facility risk-reduction efforts and building community preparedness and response capabilities.

Goal 5 - Compliance and Environmental Stewardship, Objective 5.3 - Improve Human Health and the Environment in Indian Country: Protect human health and the environment on tribal lands by assisting federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

6. Emergency Management

Desired Environmental Outcomes (Long-term Goals):

Land, water, and air in Indian country are protected from releases of oil and hazardous substances through prevention, preparedness, and response activities.

OEM's programs play a key role in protecting the environment through prevention of, preparation for, and response to releases of oil and hazardous substances. Oil and chemical spills endanger public health, imperil drinking water, and can damage natural resources that have cultural or subsistence importance. For these reasons, OEM's priority is to reduce the risk of releases in Indian country by encouraging tribes to work with EPCRA²²-covered facilities and plan for emergencies involving hazardous substances. By implementing EPCRA provisions, tribes may establish and maintain current tribal emergency response planning committees (TERCs) [or participate in a local emergency planning committee (LEPC)] and emergency response plans, and participate in accident prevention and response initiatives, which EPA believes may reduce the risk of chemical releases into tribal communities.

Currently, little information is collected nationally regarding emergency management activities in Indian country. An important first step is to improve this knowledge so that EPA can evaluate where to focus its efforts and assess whether the appropriate resources are being directed to activities in Indian country.

Strategies to Achieve these Outcomes (Shorter-term Goals):

Increase knowledge and coordination within EPA about emergency management activities occurring in or affecting Indian country and increase knowledge of sites in or near Indian country requiring a spill prevention, control, and countermeasure (SPCC); facility response plan (FRP); or risk management plan (RMP).

Increase tribal awareness of emergency planning and prevention. OEM intends to: update the 2002 fact sheet, "Chemical Emergency Preparedness and Prevention in Indian Country," including tips and strategies for tribal participation in EPA regional planning and response; place relevant information on OEM's and OSWER's tribal Web site; report relevant tribal information to the National Tribal Caucus and

²² Please see Appendix C for more information on EPCRA.

Regional Response Teams; and continue to encourage outreach by EPA Regions to tribes.

Build tribal capacity to develop emergency response plans or establish mutual aid agreements. Federally-recognized tribes have the same role as states in the development of chemical emergency preparedness programs under EPCRA. OEM intends to work with tribes to build capacity in this area so that implementation across jurisdictions is more seamless.

Build tribal capacity to develop oil spill prevention capacity and increase general oil spill awareness. While EPA's SPCC regulation is solely a federal program, tribes can develop their own spill prevention programs or above ground storage tank programs. By preventing spills through a regular inspection program, tribes can reduce this hazard. Additionally, the participation of tribal agencies in Area and Sub-area Contingency Planning Committees under the Oil Pollution Act (OPA), where these have been established in or near Indian country, can contribute to the success of the National Response System for responding to oil and hazardous substance releases, and act as a learning and networking mechanism for the tribes.

Activities to Implement these Strategies:

Collect additional data on emergency management activities in Indian country. EPA intends to begin efforts to track the following activities in Indian country on a national basis: location of inspected regulated facilities (SPCC, FRP and 112 (r)), number of regulated facilities inspected in Indian country, SPCC inspections and compliance rates, number of drills and response to spills, whether tribes have emergency response plans or mutual aid agreements, and number of tribes trained in emergency planning and response. EPA has begun to map the location of regulated facilities to determine how many facilities lie within or near Indian country.

Identify tribes with the highest chemical risk. There are several factors that can be considered in determining which tribes have a higher potential for chemical risk relative to others. As a first step, EPA intends to use the presence of a 112 (r) facility as an indicator of chemical risk and share information and technical assistance with interested tribes with a 112 (r) facility to encourage the establishment of an emergency response plan or a mutual aid agreement for response. After this initial step, EPA may expand its focus to evaluate the potential for chemical risk based on the presence of other EPCRA facilities, and major transportation routes (e.g., risk of transportation accidents), etc.

Establish regular communication among EPA staff and tribes. The OEM Tribal Coordinator intends to identify points of contact within each Region and within each OEM division and OECA. Regular conference calls would facilitate communication among the Regions and between the Regions and headquarters. OEM also intends to utilize the OSWER Tribal Web page (<http://www.epa.gov/oswer/tribal>) to post information, such as example tribal emergency response plans, and related activities. This would allow for better communication and coordination.

Increase tribal participation in training. EPA hopes to increase tribal attendance at emergency prevention and response trainings, or facilitate additional tribal training opportunities on topics such as SPCC, emergency response plans, National Incident Management System (NIMS) compliance, methamphetamine labs, and federal inspector credentials. EPA also intends to

continue to distribute the CD training, “Community Response Planning Manual and Template for Tribes, Villages and Other Small Communities.”

Strengthen relations with Federal Emergency Management Agency, Department of Homeland Security, and Department of Transportation and the Indian Health Service. EPA can enhance its ability to communicate with tribes by improving coordination with other federal agencies that work with tribes on emergency management. This can be accomplished by discussing tribal-related emergency response activities with the National Response Team (see www.nrt.org).

Indicators to Track:

- Number of regulated facilities (i.e., discriminate among SPCC and FRP/CAA section 112(r) facilities) inspected in Indian country.
- Compliance rate of inspected facilities subject to SPCC/FRP regulations in Indian country.
- Percentage of tribes with 112 (r) facilities that have an emergency response plan, have established a mutual aid agreement, or are covered in the facilities’ emergency response plan.
- Number of oil spills and releases of hazardous substances occurring in Indian country, where EPA is the lead.
- Number of EPA-led trainings offered and the number of tribal staff trained for emergency management-related purposes.

**EPA Strategic Plan –
Applicable Elements**

Goal 3 - Land Preservation and Restoration: Preserve and restore the land by using innovative waste management practices and cleaning up contaminated properties to reduce risks posed by releases of harmful substances.

Objective 3.2 - Restore Land, Subobjective 3.2.2 - Clean Up and Revitalize Contaminated Land:

Control the risks to human health and the environment at contaminated properties or sites through cleanup, stabilization, or other action, and make land available for reuse.

Goal 5 - Compliance and Environmental Stewardship

Objective 5.3 - Improve Human Health and the Environment in Indian Country: Protect human health and the environment on tribal lands by assisting federally-recognized tribes to build environmental management capacity, assess environmental conditions and measure results, and implement environmental programs in Indian country.

7. Federal Facilities Restoration and Reuse

Desired Environmental Outcomes (Long-term Goal):

Land and water in Indian country are protected by cleaning up contamination from federal facilities.

FFRRO provides technical and regulatory oversight at Superfund federal facilities, or those on the NPL, to ensure protection of human health, effective program implementation, government-to-government consultation, and meaningful public involvement. FFRRO works with other federal agencies, including DoD, DOE, DOI, and the Department of Agriculture to assist in finding appropriate cleanup solutions at both NPL sites and Base Realignment and Closure (BRAC) sites, all of which have sites located at or around tribal lands. FFRRO's priorities are focused primarily in ensuring meaningful government-to-government consultation and tribal involvement in the cleanup decision-making process, so that tribal concerns, including cultural lifeways concerns, can be an integral part of the decision-making process.

Helpful links for DoD and DOE Web sites are:

- DoD Native American Lands Environmental Mitigation Program
<https://www.denix.osd.mil/denix/Public/Native/native.html>
- DOE Environmental Management Tribal Programs
<http://www.em.doe.gov/tribalpages/initiatives.aspx>

Strategies to Achieve these Outcomes (Shorter-term Goal):

Facilitate tribal involvement in the process to clean up and reuse federal facilities, focusing on NPL and BRAC sites.

Build tribal capacity through grants, technical advice, and training programs.

Promote interagency collaboration on tribal policy, federal facility response action decisions, and resource issues.

Activities to Implement these Strategies:

Involve tribes in munitions workgroups and other response efforts at federal facilities. EPA would like to increase tribal involvement in munitions response efforts at federal facilities, including the Munitions and Explosives of Concern Hazard Assessment (MEC HA) workgroup. EPA, DoD, tribes, states, DOI, Federal Land Managers, and others participate in these workgroups and provide input for strengthening the detection, assessment, and remedial efforts of munitions and ordnance. EPA will also continue to work with tribes at mining sites.

Involve tribes through advisory boards and community groups. FFRRO works with DoD and DOE and their respective stakeholders at the local level by providing technical and regulatory input at advisory board meetings and at the national level by developing policies for establishing and maintaining advisory boards, including DoD's restoration advisory boards, DOE's site-specific advisory boards, and Superfund Community Advisory Groups. Such boards and groups provide one forum of information exchange and opportunities for local community members and tribes to give input in the decision-making process.

Facilitate federal land transfer to tribes. FFRRO, working with the Federal Facility Enforcement Office (FFEO) in OECA, intends to identify opportunities for land transfer to tribes from DoD base closures (BRAC). EPA is also working with DoD and DOE to determine which federal facilities have been transferred to BIA to be held in trust for tribes in the past.

Improve data quality of BRAC and Superfund federal facilities in Indian country. FFRRO works with regional staff in improving the quality of data of sites located directly on or near tribal lands; the data is maintained in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database.

Indicators to Track:

- Number of acres transferred to a tribe from a BRAC site.
- Percent of tribal involvement in advisory boards and community groups.

VI. Summary of OSWER's Tribal Program Measures and Indicators

| Goal/ Obj/ Sub- Obj | Office | Current OSWER Tribal-Specific Performance Measures Measure | Primary Source of Measure | | | Tribal Capacity Building Activity | Tribal Data Improvement Activity | Tribal Environmental Outcome Activity |
|------------------------------|---------------|--|--|---|--|--|---|--|
| | | | 2006-2011 EPA Strategic Plan Strategic Target | FY 08 OSWER NPM Guidance National Target | OSWER Tribal Strategy Performance Measure 2011 Target | | | |
| 3.1.2 | OSW | Number of tribes covered by an integrated waste management plan. | 118 | 26 | | ✓ | | |
| 3.1.2 | OSW | Number of open dumps in Indian country and other tribal lands that are closed, cleaned up, or upgraded. | 138 | 30 | | | | ✓ |
| 4.2.3 | OBLR | Number of tribes supported by Brownfields cooperative agreements. | | No Target | | ✓ | | |
| 3.2.2 | OUST | Number of LUST cleanups in Indian country that meet risk-based standards for human exposure and groundwater migration. | | 30 | | | | ✓ |
| 3.1.2 | OUST | Percentage of UST facilities in Indian country that are in significant operational compliance with both release detection and release prevention (spill, overfill, and corrosion protection) requirements. | | | 71 | | | ✓ |
| | | Future Cross-Program Revitalization Measures | | | | | | |
| Goal²³ | Office | Measure | | | | Tribal Capacity Building Activity | Tribal Data Improvement Activity | Tribal Environmental Outcome Activity |
| Goals 3 & 4 | OSWER -wide | Number of sites and acres being addressed by OSWER cleanup programs located in Indian country and Alaska tribal lands. | | | | | ✓ | |
| Goals 3 & 4 | OSWER -wide | Number of acres that are protective for people under current conditions for sites in Indian country and Alaska tribal lands. | | | | | | ✓ |
| Goals 3 & 4 | OSWER -wide | Number of acres that are ready for anticipated uses for sites in Indian country and Alaska tribal lands. | | | | | | ✓ |

²³ These priorities are conveyed in EPA Administrator Stephen L. Johnson's Action Plan (<http://www.epa.gov/adminweb/administrator/actionplan.htm>), OSWER Assistant Administrator Susan Parker Bodine's Action Plan (<http://www.epa.gov/oswer/actionplan/index.htm>) and Goals 3 and 4 of EPA's Strategic Plan (<http://www.epa.gov/ocfopage/plan/plan.htm>).

| Goal/ Obj ²⁴ | Office | Other Tribal-Specific Indicators to Track | | | |
|----------------------------|------------|--|-----------------------------------|----------------------------------|---------------------------------------|
| | | Indicator | Tribal Capacity Building Activity | Tribal Data Improvement Activity | Tribal Environmental Outcome Activity |
| Goals 3 and 4 | IPCO | Number of OSWER staff trained. | | | |
| Goals 3 and 4 | IPCO | Number of hits on OSWER's Tribal Programs Web site and the number of inquiries from the Web site. | | | |
| Goals 3 and 4 | OSWER-wide | Number of DITCAs involving an OSWER program in EPA. | ✓ | | ✓ |
| 3.2 | OSRTI | Number of tribes supported by a Superfund cooperative agreement and type of cooperative agreements used. | ✓ | | |
| 4.2 | OBLR | Placeholder for Future Indicator: Develop an indicator based on the results of the Brownfields State, Tribal and EPA 128(a) Phase III Measures Workgroup. | ✓ | | |
| 4.2 | OBLR | Number of 128(a) tribal response program cooperative agreements. | ✓ | | |
| 4.2 | OBLR | Number of 104(k) competitive cooperative agreements. | ✓ | | |
| 3.1 | OUST | Total number of tribal staff trained on development and implementation of an UST program. | ✓ | | |
| 3.1 | OUST | Number of federal inspector credentials issued to tribes to conduct federal UST compliance inspections. | | | ✓ |
| 3.2 and 4.1 | OEM | Number of regulated facilities (i.e., under Spill Prevention, Control, and Countermeasure (SPCC) and Clean Air Act section 112(r)) inspected in Indian country. | | ✓ | |
| 3.2 | OEM | Compliance rate of inspected facilities subject to SPCC/FRP regulations in Indian country. | | | ✓ |
| 4.1 | OEM | Percentage of tribes with 112 (r) facilities that have an emergency response plan, have established a mutual aid agreement, or are covered in the facilities' emergency response plan. | ✓ | | |
| 3.2 | OEM | Number of oil spills and releases of hazardous substances occurring in Indian country where EPA is the lead. | | ✓ | |
| 3.2 and 4.1 | OEM | Number of EPA-led trainings offered and the number of tribal staff trained for emergency management-related purposes. | ✓ | | |
| 3.2 | FFRRO | Number of acres transferred to a tribe from a Base Realignment and Closure site. | | ✓ | |
| 3.2 | FFRRO | Percent of tribal involvement in advisory boards and community groups. | ✓ | | |

²⁴ These indicators support priorities conveyed in specified sections of Goals 3 and 4 of EPA's Strategic Plan (<http://www.epa.gov/ocfopage/plan/plan.htm>).

Appendix A – Summary of EPA and OSWER National Indian Programs

OSWER Tribal Program Structure

OSWER has designated tribal coordinators in each of the programmatic offices, who team with an overall OSWER Tribal Coordinator, to ensure that tribal issues related to OSWER programs are communicated, coordinated and effectively addressed within OSWER, throughout EPA, and among the federal agencies, tribes, and appropriate stakeholders.

- **Within OSWER:** The tribal coordinators within the program offices help ensure that program implementation decisions and policies are consistent with the principles of EPA's Indian Policy and OSWER's program initiatives. The OSWER tribal coordinator meets regularly with the program tribal coordinators, and provides leadership and direction for the overall OSWER tribal program.
- **Throughout EPA:** OSWER coordinates its Indian Program with a network of tribal contacts in AIEO, headquarters program offices, and regional program offices. The OSWER Tribal Coordinator is the primary OSWER contact for the cross-agency Indian Program Policy Council (IPPC) and the National Indian Work Group (NIWG). Individual OSWER program office tribal coordinators and managers also participate in these venues.
 - **AIEO** is the lead office for coordinating the overall EPA tribal program to ensure consistency with EPA's Indian Policy and the Administrator's Initiatives. AIEO manages the Indian General Assistance Program (GAP) appropriation, the National Tribal Operations Committee (NTOC), and the NIWG. AIEO also provides support to the IPPC and regional and headquarters offices.
 - OSWER also actively supports cross-cutting EPA tribal initiatives, such as the **IPPC**, a high level Agency group co-chaired by the Deputy Assistant Administrator for the Office of Water and the Deputy Regional Administrator for the lead region for the National Indian Program. The IPPC is charged with identifying and implementing collaborative means of addressing those national tribal issues that have environmental implications for multiple media areas and to enhance the protection of human health and the environment in Indian country.
 - The **NIWG** is chaired by the director of AIEO and is composed of representatives from the regional and headquarters offices. The NIWG serves to coordinate program activities and share information among AIEO and the headquarters and regional offices. The NIWG serves as a primary means for AIEO to engage staff throughout EPA on Indian program issues and coordinate EPA's Indian program. OSWER networks with NIWG members through regular conference calls and national meetings.
 - **EPA Regions:** EPA's regional offices are responsible for, among other things, implementing the Agency's authorities with the states, tribes and local governments located within their geographical boundaries, and are the primary means for providing direct funding support to tribal governments. Currently, nine of the ten EPA Regions include federally-recognized tribes, and these Regions have established tribal assistance program offices, and/or tribal contacts or coordinators to ensure EPA programs work directly with federally-recognized tribes in a government-to-government relationship to carry out the Agency's responsibilities. Tribes and Regions have also established Regional Tribal

Operations Committees, or similar mechanisms, which formally engage tribal representatives and regional personnel, on a regular basis, to discuss and deliberate on environmental issues impacting Indian country. Similar to other EPA programs, the EPA tribal program has a "Lead Region" rotational assignment. The purpose of the Lead Region System is to ensure that EPA makes quality decisions by providing the Regions with a formal opportunity to participate in the decision-making process—seeking consensus on issues or clarifying regional views on majority and minority positions to the various offices. Most of OSWER's program offices conduct regular conference calls with their regional counterparts to share information and discuss tribal-specific issues and activities.

- **Among Federal Agencies:** OSWER coordinates with federal agencies regarding tribal issues on a regular basis as part of its program office activities.
- **With Tribes:** OSWER participates on **NTOC** which is composed of 19 tribal representatives, elected through Regional Tribal Operations Committees, and EPA senior managers from headquarters offices and regions. The NTOC functions to exchange views and information in relation to management or implementation of federal programs sharing "intergovernmental responsibilities or administration." OSWER also works directly with tribal governments on particular issues, and to carry out government-to-government consultation in developing Agency actions that affect tribes, where appropriate.

OSWER recognizes that tribal programs generally may draw funding from multiple sources, including from the GAP, from other EPA media offices, and from other federal agencies. OSWER supports tribal coordination of multimedia environmental protection efforts, and believes that this type of coordination can promote effective implementation and operation of a full range of environmental protection measures, and may best serve the needs of the tribe.

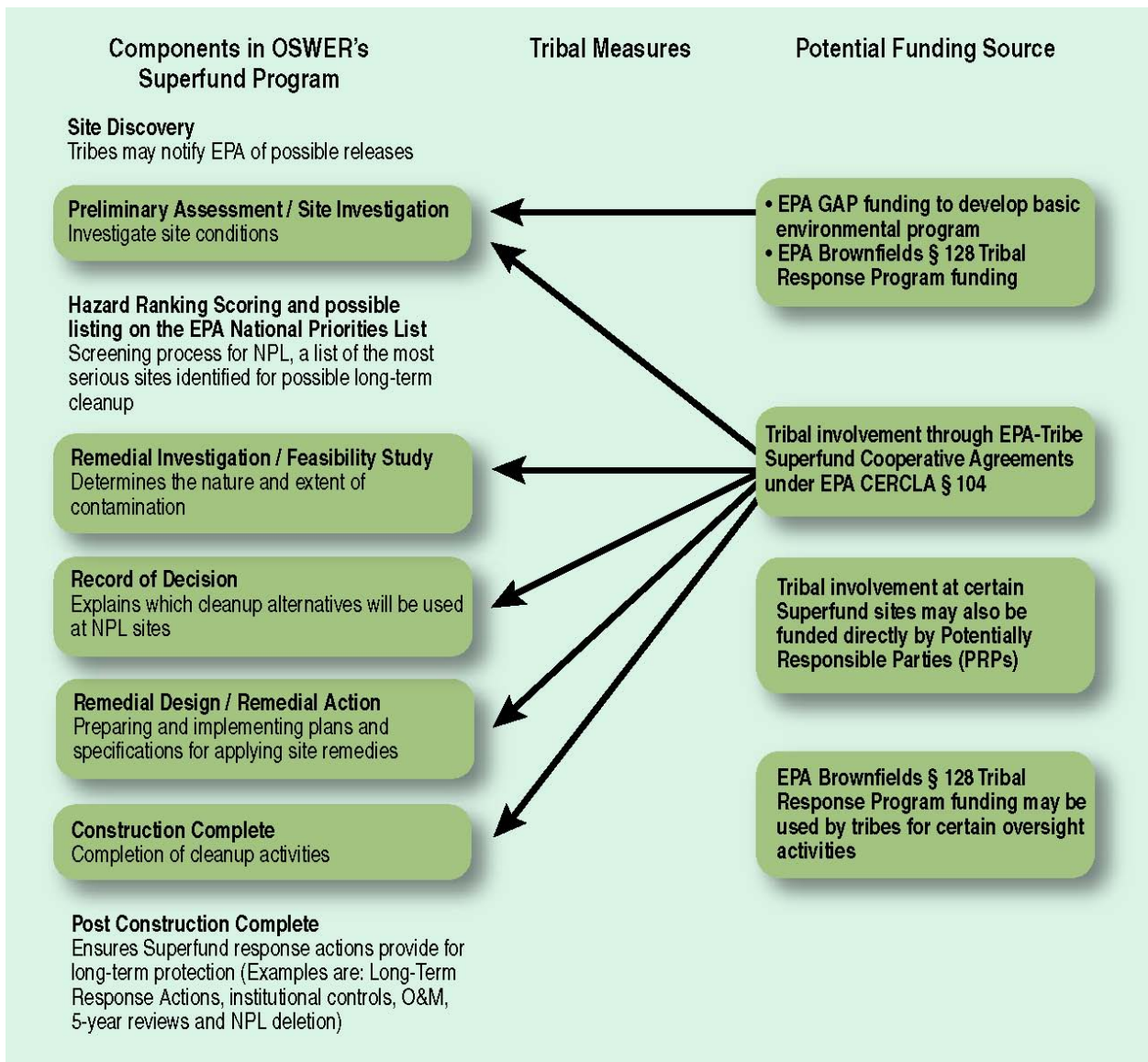
For further information on EPA's National Indian Program, please visit the internet at: www.epa.gov/tribal/.

Appendix B – Information on OSWER Programs

CERCLA Superfund Program

Under CERCLA, some tribes have been involved in assessing potential sites within their areas for eligibility in Superfund and participating in the cleanup process at Superfund sites that impact tribal communities, land, and natural resources. The Agency works with tribes to identify and respond to Superfund-eligible cleanup needs, enhance tribal participation in the cleanup process at sites impacting tribes, and provide technical assistance for effective clean up of uncontrolled or abandoned hazardous waste sites. The diagram below highlights the basic components of EPA’s Superfund program and the potential tribal funding sources for each component activity.

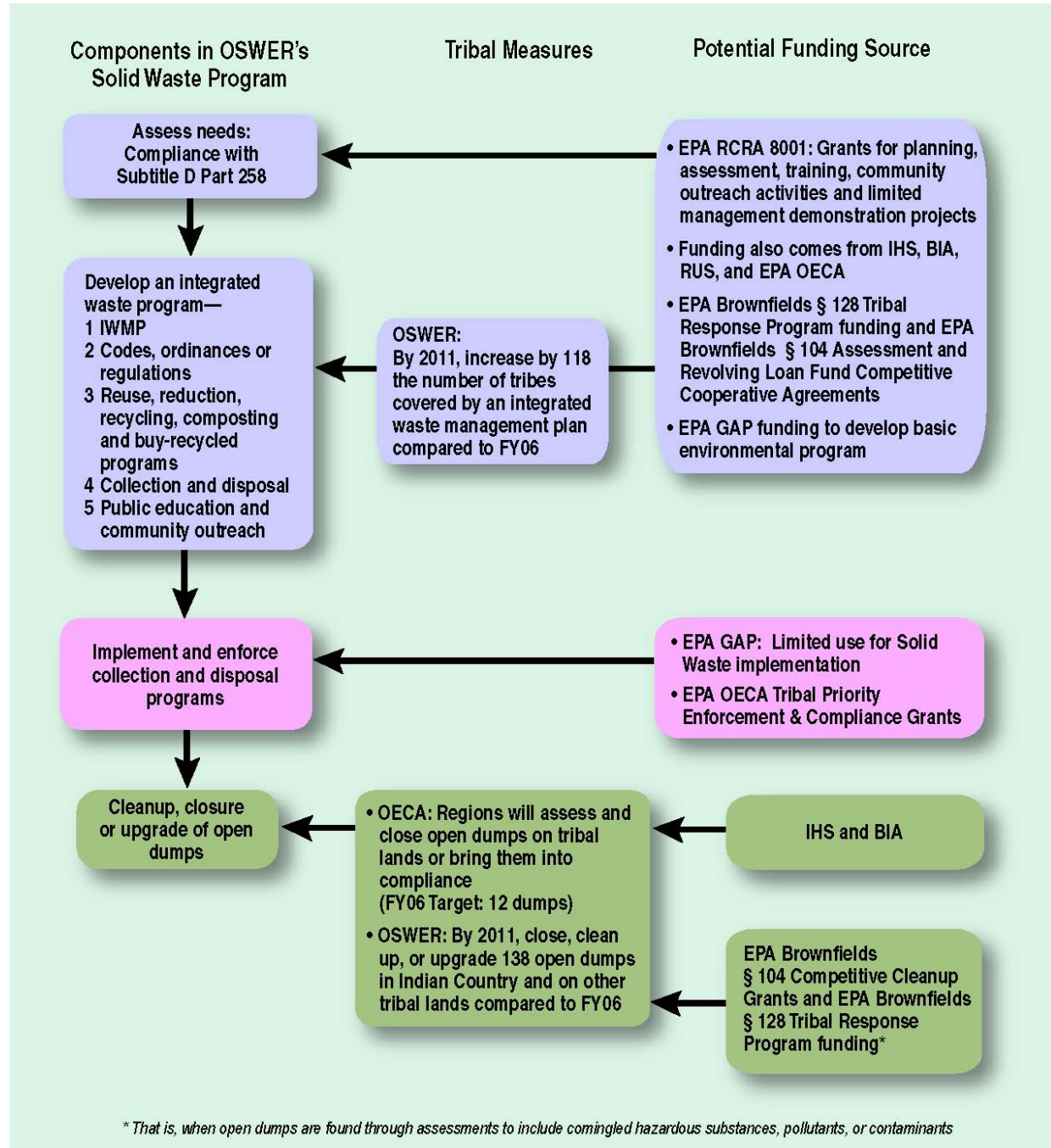
Superfund Program Overview



RCRA Solid Waste Program (RCRA Subtitle D)

The goal of OSWER's Solid Waste Program in Indian country is to have tribes and EPA reach a shared understanding of the nature and extent of non-hazardous waste issues in Indian country and establish self-sustaining integrated waste management programs that protect human health and the environment in Indian country and other tribal areas. The diagram below highlights the basic components of EPA's Solid Waste Program as it relates to tribes, key tribal measures that OSWER tracks with respect to tribes, and potential funding sources for each component activity.

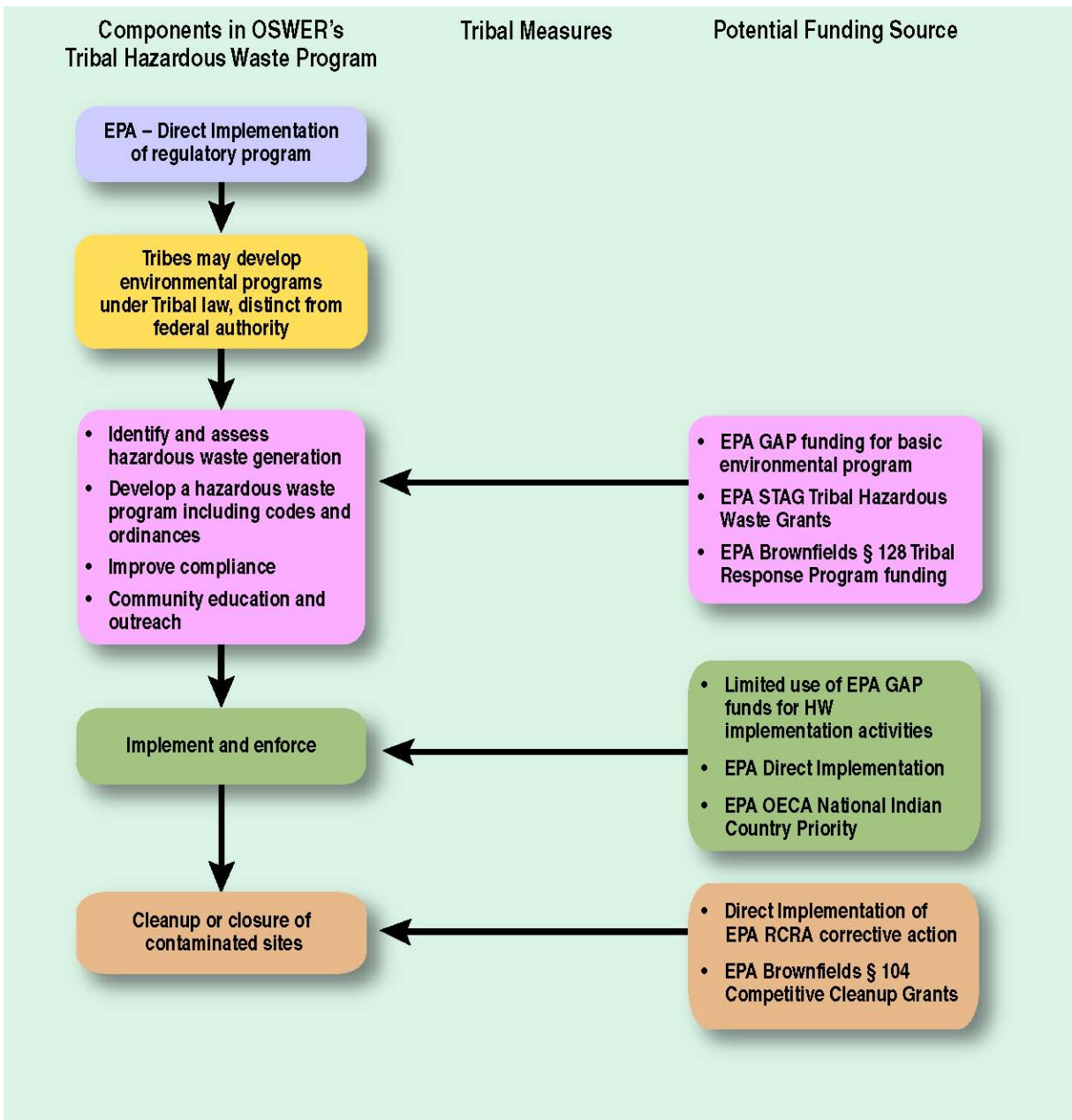
Solid Waste Program Overview (RCRA Subtitle D)



RCRA Hazardous Waste Program (RCRA Subtitle C)

OSWER’s vision for the hazardous waste program in Indian country is to have a shared understanding of the nature and extent of hazardous waste issues in Indian country and establish self-sustaining integrated waste management programs, where needed. The RCRA Subtitle C program is a comprehensive effort to ensure that hazardous waste is managed safely from “cradle to grave,” that is: from the moment it is generated; while it is transported, treated, or stored; until it is finally re-used or disposed of in a safe manner. The diagram below highlights the basic components of EPA’s hazardous waste program as they relate to tribes and the potential funding sources for each component activity.

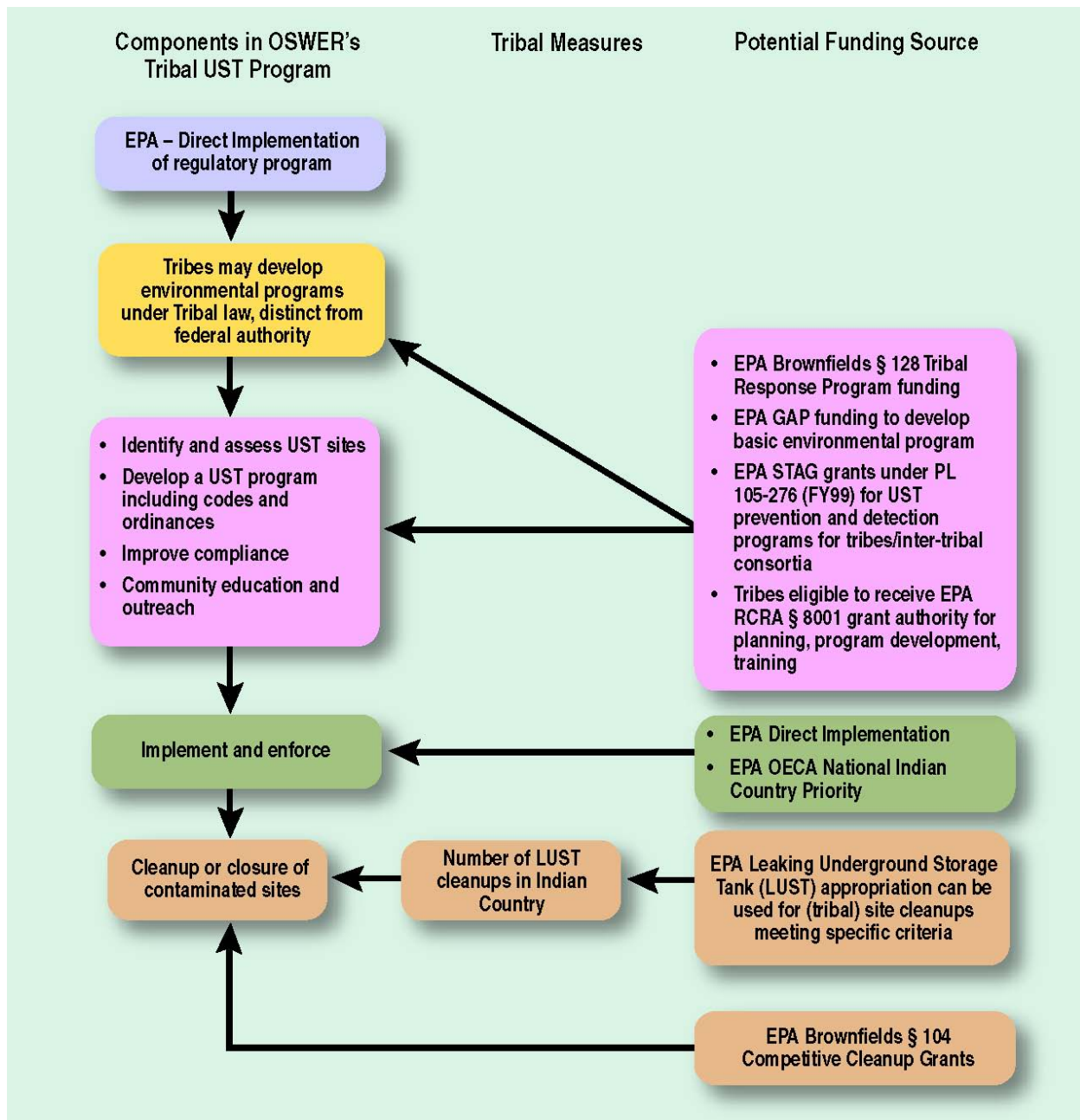
Hazardous Waste Program Overview (RCRA Subtitle C)



RCRA UST Program (RCRA Subtitle I)

OSWER's UST program strives to ensure that compliance rates with federal and tribal tank program requirements for leak detection and leak prevention in Indian country are significantly increased. In addition, OUST's tribal strategy identifies key issues and actions to strengthen the relationships between EPA and tribes, improve information sharing, enhance tribal capacity, and further the cleanup and compliance of USTs in Indian country. The diagram below highlights the basic components of EPA's UST program as they relate to tribes, the key tribal measures that OSWER tracks with respect to tribes, and potential funding sources for each component activity.

UST Program Overview (RCRA Subtitle I)



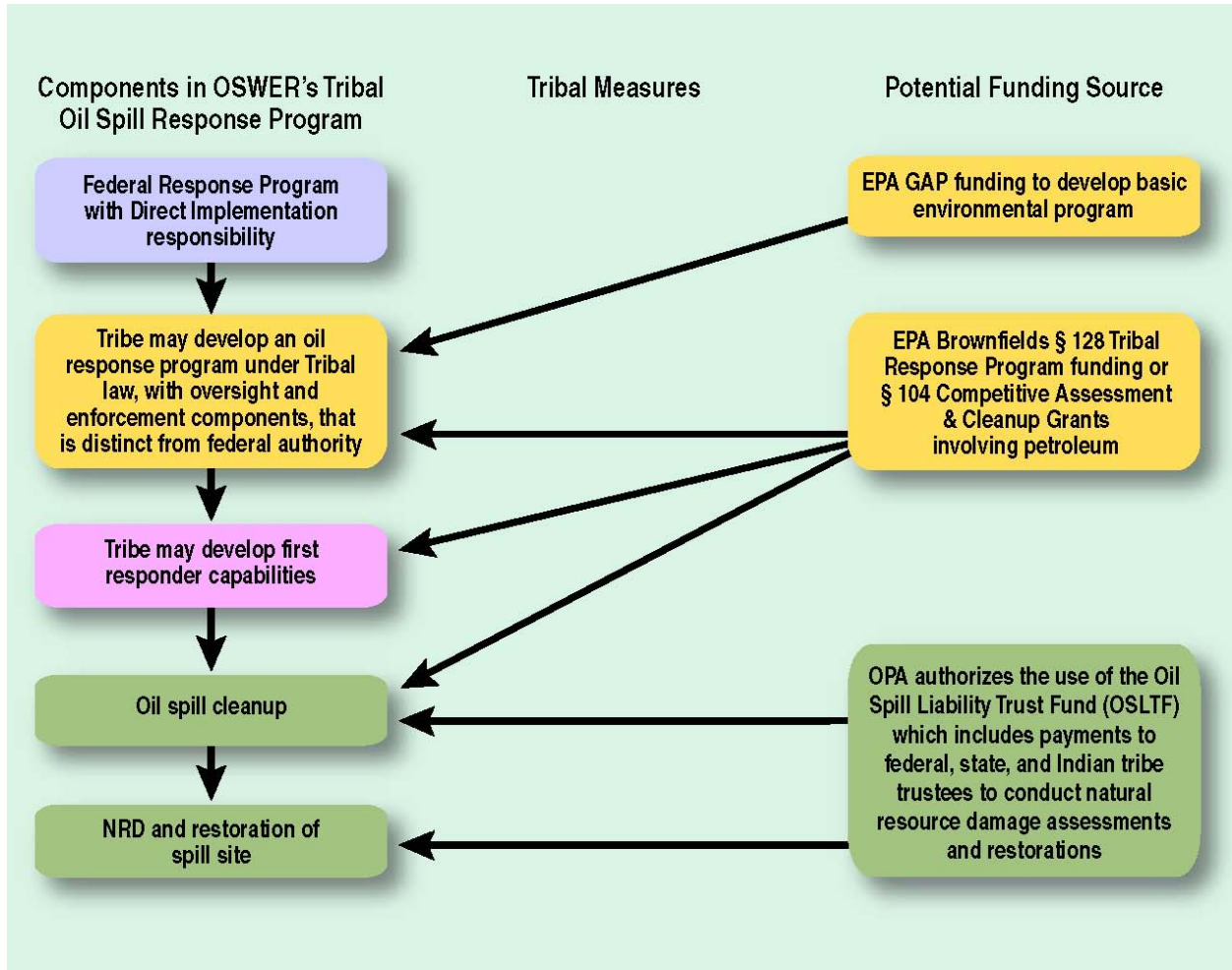
Oil Spill Response

EPA receives notification and responds to releases through the National Response System, which is a multi-agency preparedness and response mechanism that includes: the National Response Center (NRC), and the National Response Team (NRT) composed of 16 federal agencies, 13 Regional Response Teams, and federal on-scene coordinators. These entities work with state, local, and tribal officials to develop and maintain contingency plans for effective response to hazardous substance and oil emergencies, and to ensure that all necessary resources, such as personnel and equipment, are available and containment, cleanup, and disposal activities proceed quickly, efficiently, and effectively.

Under the Oil Pollution Act (OPA), some tribes have developed first-responder capabilities through tribal police, fire, and emergency response departments. In addition, many tribes have developed emergency response plans. EPA generally works with tribes to provide technical assistance. In addition, EPA is the federal on-scene coordinator that can respond to incidents that are beyond the capability, or otherwise cannot be addressed, by the tribal agency or responsible party.

The goal of OSWER's Oil Spill Program in Indian country is to ensure that oil storage/handling facilities, either tribal or non-tribally-owned/operated, in Indian country are in compliance with spill prevention, control and countermeasure (SPCC) and facility response plan (FRP) requirements, and develop a basic oil spill awareness—including participation in Area and Sub-area Contingency Planning Committees, drills, Regional Response Teams, response community exercises, and Spills of National Significance exercises—to ensure proactive measures are applied before and after an oil discharge in Indian country.

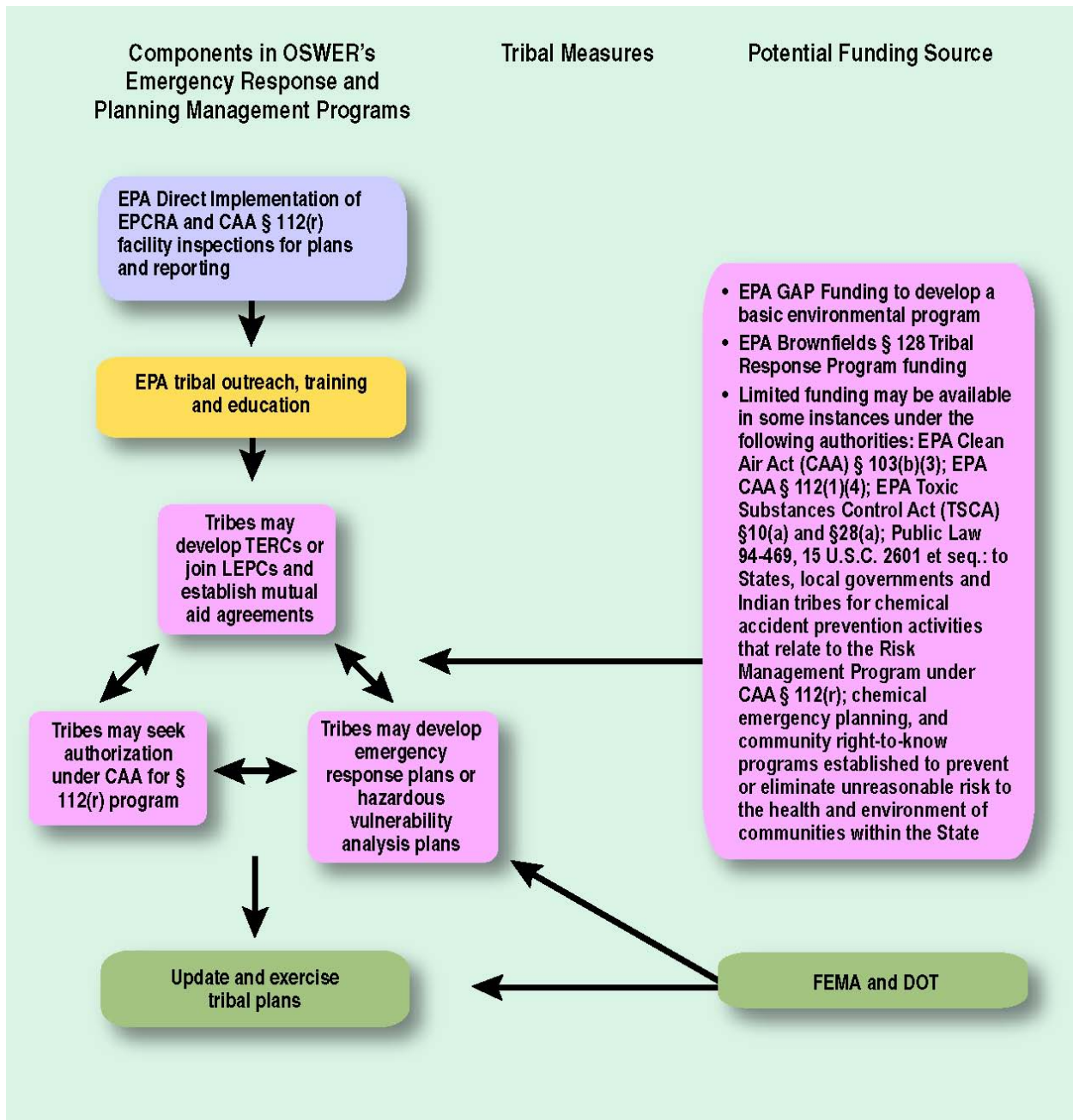
Oil Spill Program Overview



Emergency Response Planning

EPA seeks to have tribes establish and maintain current tribal emergency response planning committees (TERCs) [or participate in a local emergency planning committee (LEPC)] and emergency response plans to reduce chemical risks in tribal communities, and participate in accident prevention and response initiatives. EPA's goal is that tribes have basic awareness of chemical hazards in their communities and participate in accident prevention initiatives.

Emergency Response Program Overview



Preparedness and Response Along the U.S.-Mexico Border: Coordination with the Tribal, State and Local Governments

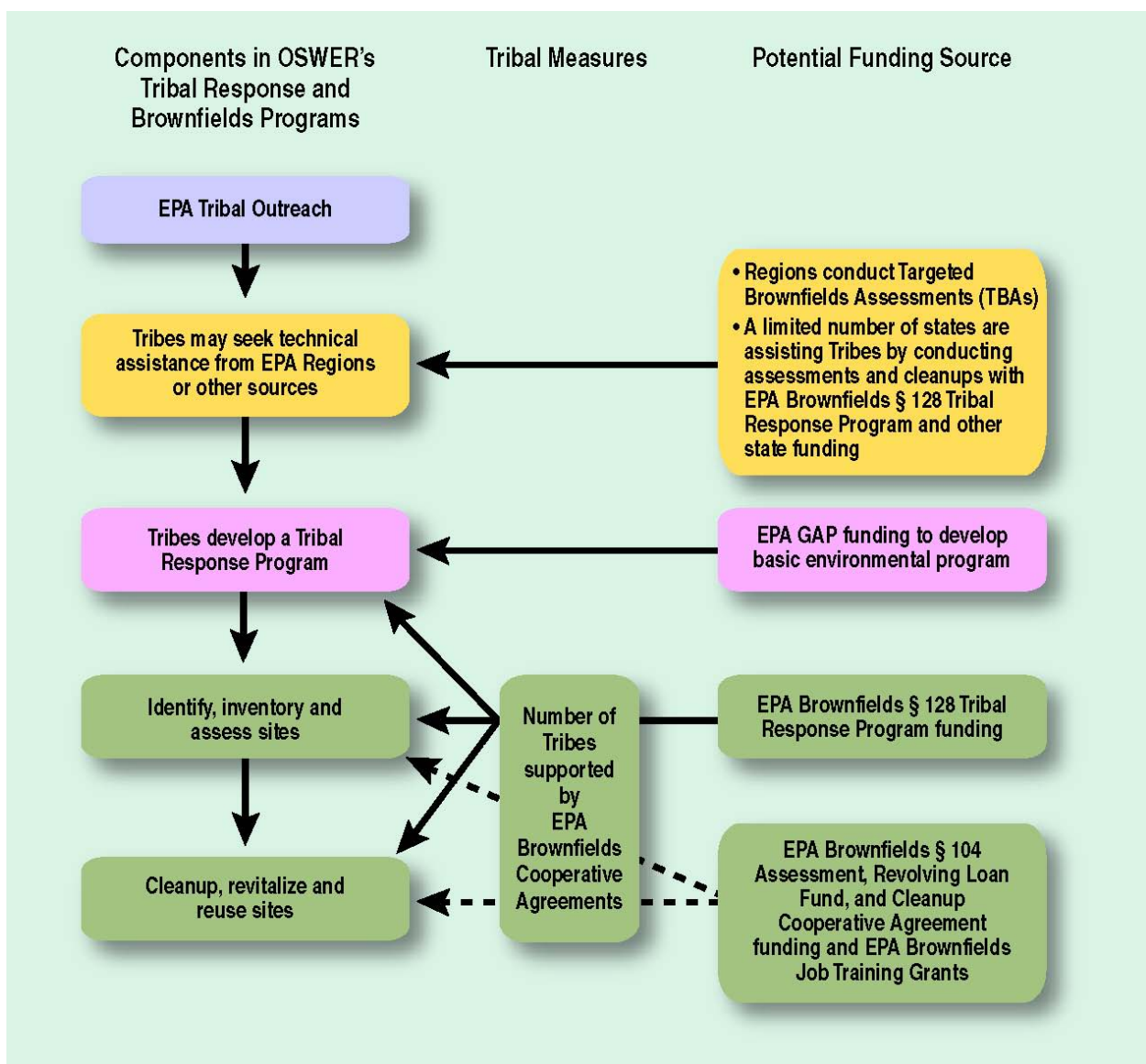
OEM is involved with the U.S.-Mexico Border 2012 Program, which includes Emergency Preparedness and Response activities along the 100 miles of the U.S.-Mexico inland boundary, along with Regions 6 and 9, Mexico, and the 26 U.S. federally-recognized tribes in the border region.

Ninety percent of the border population resides in 15 paired, inter-dependent sister cities. Many of the sister city pairs along the border share common air and water resources which calls for tri-national cooperation to overcome the many environmental challenges. There are 26 U.S. federally-recognized tribes, which range in size from nine to 17,000 members, and seven indigenous Mexican groups in the border region. Recognizing that the contingencies or emergencies involving hazardous materials affect the local community first, Joint Response Team members agreed that planning efforts are needed for the tribal governments and the 30 sister cities – 15 in Mexico and the adjacent 15 in the United States – that could be affected by a major hazardous chemical substance release. The Sister City Contingency Plan Program was created to meet that need. Fourteen sister cities have Joint Contingency Plans and the El Paso-Ciudad Juarez- Sun Land Park Sister City Plan was signed in June of 2007.

Brownfields

The Brownfields Program promotes the cleanup and redevelopment of brownfields sites through policies, laws, and initiatives that explore sector-based solutions, enhance environmental quality, spur economic development, and revitalize communities. As part of its mission to protect human health and the environment, EPA is dedicated to revitalizing all types of contaminated land to productive economic and greenspace use, and states and tribes play a significant role in cleaning up brownfields. OBLR manages the Agency's Brownfields Program and is tasked with implementing the Small Business Liability Relief and Brownfields Revitalization Act and coordinating Brownfields Programs within each of the regional offices.

Brownfields Program Overview



Appendix C – OSWER Statutory Authorities and Status of Tribes

Statutes Implemented by the Office of Solid Waste and Emergency Response

Resource Conservation and Recovery Act

Statutory Overview

The Resource Conservation and Recovery Act (RCRA) governs the management of solid and hazardous waste and underground storage tanks (USTs) to ensure that wastes are managed in an environmentally safe manner. The goals of RCRA also include conserving energy and natural resources through waste recycling and recovery and reducing or eliminating waste generation.

Tribal Status

- Tribes can not be treated in the same manner as states for purposes of implementing Subtitle D of RCRA.
- **Subtitle D (Solid Waste):** EPA cannot approve a tribal Municipal Solid Waste Landfill (MSWL) permit program as it does with states. However, EPA can issue site-specific rules in Indian country that may provide flexibility to solid waste landfill requirements at 40 CRF Part 258.
- **Subtitles C (Hazardous Waste) & I (Underground Storage Tanks):** EPA maintains direct implementation authority in Indian country.

Comprehensive Environmental Response, Compensation, and Liability Act

Statutory Overview

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) provides broad authority for federal program response to releases of hazardous substances and pollutants or contaminants.

Tribal Status

- Tribes have substantially the same roles as states for many purposes under CERCLA (see Section 126).
- CERCLA provides for a tribal role by: (1) providing tribes substantially the same treatment as states for specified activities—notification of releases, consultation on remedial actions, access to information, and roles and responsibilities under the National Contingency Plan (NCP), and (2) providing tribal eligibility to enter into cooperative agreements with EPA to perform or participate in Superfund-eligible site response activities. (EPA retains final oversight authority.)

Oil Pollution Act of 1990

Statutory Overview

The Oil Pollution Act (OPA) provided new requirements in part by amending section 311 of the Clean Water Act, for preventing, preparing for, and responding to any oil spill affecting inland U.S. waters; expanded liability provisions; and consolidated existing oil spill liability funds into, and strengthened, the Oil Spill Liability Trust Fund to provide greater resources to respond to oil spills.

Tribal Status

- The OPA addresses natural resource damages and provides for Indian Tribe Trustees for natural resources.
- The federal government must direct all public and private response efforts to spills, although states and tribes may implement their own, non-federal oil programs.
- Indian Tribe Trustees for natural resources are authorized to assess and recover natural resource damages, and the Trust Fund is authorized to be used for payment of Indian Tribe natural resources trustees for costs incurred in restoring/rehabilitating, etc. natural resources damaged by an oil spill.

OSWER's Oil Program uses the authorities under both OPA and the Clean Water Act (CWA), and their implementing regulations (NCP and the Spill Prevention, Control and Countermeasure Regulation (SPCC)) to address the potential environmental threats posed by petroleum and non-petroleum oils.

Emergency Planning and Community Right-to-Know Act of 1986 (Expanded on under the Pollution Prevention Act of 1990)²⁵

Statutory Overview

The Emergency Planning and Community Right-to-Know Act (EPCRA) serves to inform communities and citizens of chemical hazards in their areas and to encourage and help communities plan for emergencies involving hazardous substances. EPCRA has four major provisions: one addresses emergency planning and three address chemical reporting. EPCRA establishes requirements for federal, state and local governments, Indian Tribes, and industry regarding emergency planning and “Community Right-to-Know” reporting on hazardous and toxic chemicals. EPCRA Section 313 requires covered facilities to annually report to EPA and their state or tribe on releases and transfers of toxic chemicals. EPA is required to make this data available to the public in a database, which is called the Toxics Release Inventory (TRI). The Pollution Prevention Act of 1990 expanded the information required to be reported to the TRI to include information on waste management and source reduction activities. The provisions help increase the public’s knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States, Tribes and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

Tribal Status

EPA recognizes a role for tribes similar to states in planning for responding to chemical emergencies. EPA regulations under EPCRA Section 313 establish requirements for covered facilities located in Indian country to report TRI information to the appropriate tribe.

Small Business Liability Relief and Brownfields Revitalization Act

Statutory Overview

The Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law, P.L. 107-118) amends CERCLA. The Law defines a brownfields site and authorizes funding for assessment and cleanup of brownfields properties and state and tribal response programs. The Law limits the liability of certain contiguous property owners and prospective purchasers of brownfields properties and clarifies appropriate inquiry for innocent landowners to encourage revitalization and reuse of brownfields sites.

Tribal Status

Tribes are treated as states under the Law, with the exception that Alaska Native tribes (not including the Metlakatla Indian Community) are prohibited from receiving Section 104 funding. Because implementation authority is given to non-federal entities, Brownfields is not an authorized program, and there is no express TAS requirement for tribes. The role of tribes is voluntary; tribes may develop response programs and/or inventory, assess, and clean up sites.

²⁵ OSWER also implements section 112(r) of the Clean Air Act (CAA). The CAA establishes federal standards for (1) air pollutant concentrations or emission rates from stationary and mobile sources, and (2) parameters for working with states and tribes to regulate pollutant emissions. The Act strives to improve air quality in areas that do not meet federal standards and prevent deterioration in areas where standards are being met. In 1990, section 112 (r) of the amended CAA established requirements regarding the prevention and detection of accidental releases of hazardous chemicals. The Risk Management Program (RMP) established under those requirements is an extension of the planning and preparedness programs established under EPCRA. Under the RMP program, facilities that handle quantities of regulated substances are required to develop RMPs and submit them to EPA, state or tribal agencies and local emergency planning committees (LEPCs).

Tribal Status

CAA §301(d) authorizes EPA to treat eligible tribes as states (TAS) for many purposes under the CAA. However, tribes are not required to implement CAA programs. Eligible tribes may pick and choose “severable elements” of the CAA that can be implemented separately to meet their identified needs. Tribes may establish stronger (but not weaker) pollution controls than those laid out in the CAA (through EPA-approved implementation plans). They may also play a role in permitting facilities.

Appendix D – List of References

1. 2005 Year in Review: Emergency Management – Prevention, Preparedness and Response, September 2006.
2. 2006-2011 EPA Strategic Plan: Charting Our Course, September 30, 2006.
3. The Administrator’s Action Plan.
4. A Beginner’s Booklet: Consulting with Tribes at Superfund Sites, 2006.
5. Chemical Emergency Preparedness and Prevention in Indian Country (EPA550-F-01-012), August 2002.
6. EPA FFRRO Talking Stick (EPA505-F-04-001), January 2004.
7. FY 2008 OSWER National Program Manager’s Guidance, April 2007.
8. Hazard Ranking System (HRS) Guidance, March 20, 2007.
9. Interim Guidance for OSWER Cross-Program Revitalization Measures, October 18, 2006.
10. Oil Program Update: The U.S. EPA’s Oil Program Report, October 2005.
11. OSW/Regional Tribal Integrated Waste Management (IWM) Strategy.
12. OSWER Action Plan.
13. Paper on Tribal Issues Related to Tribal Traditional Lifeways, Risk Assessment, and Health and Well Being: Documenting What We’ve Heard, The National EPA-Tribal Science Council, April, 2006.
14. Plan to Enhance the Role of the States and Tribes in the Superfund Program, March 1998.
15. Report to Congress on Implementing and Enforcing the Underground Storage Tank Program in Indian Country, Underground Storage Tank Program USEPA, August 2007.
16. Strategy for an EPA/Tribal partnership to Implement Section 1529 of the Energy Policy Act of 2005, August 2006.
17. Summary of Results from the 2004 Tribal Hazardous Waste Sites Project developed by Zender Environmental Science and Planning Services, TASWER, 2004.
18. Tribal Decision-maker’s Guide to Solid Waste Management (EPA530-R-03-013), November 2003.
19. Tribal Recommendations to EPA Office of Solid Waste and Emergency Response on Actions Necessary to Address Tribal risk and Toxics-Related Deficiencies, National Tribal Environmental Council Superfund Working Group and Forum on State and Tribal Toxics Action Tribal Affairs Project, Draft, April 4, 2005.

Appendix E – Links to EPA Tribal Program Contacts

EPA Tribal Portal – Index of all Regional Tribal Program Contacts:

<http://www.epa.gov/tribal/contactinfo.index.htm>

OSWER Tribal Web Page – Index of all OSWER Tribal Coordinators:

<http://www.epa.gov/oswer/tribal/contacts.htm>

Appendix F – Acronyms

AAI – All Appropriate Inquiry

AIEO – American Indian Environmental Office

BIA – Bureau of Indian Affairs

CAA – Clean Air Act

CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act

CERCLIS – Comprehensive Environmental Response, Compensation, and Liability Information System

CWA – Clean Water Act

DFSC – Division of Sanitation Facilities Construction

DITCA – Direct Implementation Tribal Cooperative Agreement

DoD – U.S. Department of Defense

DOE – U.S. Department of Energy

EPCRA – Emergency Planning and Community Right-to-Know Act

FFEO – Federal Facility Enforcement Office

FFRRO – Federal Facilities Restoration and Reuse Office

FRP – Facility Response Plan

GAP – General Assistance Program

HRS – Hazard Ranking System

HUD – U.S. Department of Housing and Urban Development

IHS – Indian Health Service

IPCO – Innovations, Partnerships, and Communications Office

IPPC – Indian Program Policy Council

IWM – Integrated Waste Management

LEPC – Local Emergency Response Planning Committee

LQG – Large Quantity Generator

LUST – Leaking Underground Storage Tank

MEC HA – Munitions and Explosives of Concern Hazard Assessment

MSWL – Municipal Solid Waste Landfill

NCP – National Contingency Plan

NIMS – National Incident Management System

NIWG – National Indian Workgroup

NPM – National Program Manager

NPL – National Priorities List

NRC – National Response Center

NTOC – National Tribal Operations Committee

OBLR – Office of Brownfields and Land Revitalization

OECA – Office of Enforcement and Compliance Assurance

OEM – Office of Emergency Management

O&M – Operations and Maintenance

OMDS – Operation and Maintenance Data System

OPA – Oil Pollution Act

OSLTF – Oil Spill Liability Trust Fund

OSRTI – Office of Superfund Remediation and Technology Innovation

OSW – Office of Solid Waste

OSWER – Office of Solid Waste and Emergency Response

OUST – Office of Underground Storage Tanks

PRP – Potentially Responsible Party

RCRA – Resource Conservation and Recovery Act

RMP – Risk Management Program

RTOC – Regional Tribal Operations Committee

RUS – Rural Utilities Service

SPCC – Spill Prevention, Control, and Countermeasures

STAG – State and Tribal Assistance Grant

TAS – Treatment in a Similar Manner as a State Program

TBA – Targeted Brownfields Assessment

TERC – Tribal Emergency Response Planning Committee

TRI – Toxics Release Inventory

TSDF – Treatment, Storage, and Disposal Facility

UST – Underground Storage Tank

WETG – Working Effectively with Tribal Governments

wSTARS – Web Sanitation Tracking and Reporting System